

EXHIBIT A

09:28:19

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,) CR-23-469-JSW-1
) CR-23-469-JSW-2
PLAINTIFF,)
) OAKLAND, CALIFORNIA
VS.)
) FEBRUARY 10, 2025
MORTEZA AMIRI AND DEVON)
CHRISTOPHER WENGER,) PAGES 1-47
)
DEFENDANTS.)
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT: BY: AJAY K KRISHNAMURTHY
ALEXANDRA SHEPARD
ERIC CHENG
U.S. ATTORNEY'S OFFICE
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE, 11TH FLOOR
SAN FRANCISCO, CA 94102

FOR THE GOVERNMENT: BY: ALETHEA M. SARGENT
U.S. ATTORNEY'S OFFICE
NORTHERN DISTRICT OF CALIFORNIA
1301 CLAY STREET, #340S
OAKLAND, CA 94612

APPEARANCES CONTINUED ON NEXT PAGE

REPORTED REMOTELY BY: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 APPEARANCES (CONT.'D) :

2 FOR THE DEFENDANT: BY: PAUL Q. GOYETTE
3 AMIRI JANELLE CRANDELL
4 GOYETTE, RUANO & THOMPSON
5 2366 GOLD MEADOW WAY, SUITE 200
6 GOLD RIVER, CA 95670

7 FOR THE DEFENDANT: BY: NICOLE RACHEL CASTRONOVO
8 WENGER SEKI, NISHIMURA & WATASE, PLC
9 600 WILSHIRE BLVD., SUITE 1250
10 LOS ANGELES, CA 90017

SAN JOSE, CALIFORNIA

FEBRUARY 10, 2025

P R O C E E D I N G S

(COURT CONVENED AT 9:35 A.M.)

THE CLERK: CALLING CRIMINAL CASE 23-469-JSW-1,
23-469-JSW-2. USA VERSUS MORTEZA AMIRI, U.S. VERSUS DEVON
CHRISTOPHER WENGER.

PARTIES, PLEASE STEP FORWARD AND STATE YOUR APPEARANCES.

MR. KRISHNAMURTHY: GOOD MORNING.

AJAY KRISHNAMURTHY, ALETHEA SARGENT, ERIC CHENG AND
ALEX SHEPARD FOR THE UNITED STATES.

THE COURT: GOOD MORNING.

MS. LOPES: GOOD MORNING.

NICOLE LOPES ON BEHALF OF DEVON WENGER.

THE COURT: GOOD MORNING.

MS. CRANDELL: GOOD MORNING, YOUR HONOR.

JANELLE CRANDELL ON BEHALF OF MR. MORTEZA AMIRI.

THE COURT: GOOD MORNING.

MR. GOYETTE: GOOD MORNING, YOUR HONOR.

PAUL GOYETTE ON BEHALF OF MORTEZA AMIRI.

THE COURT: GOOD MORNING.

COUNSEL, YOU MAY BE SEATED. IF I NEED TO HAVE YOU ADDRESS
THE COURT, I WILL CERTAINLY LET YOU KNOW.

SO THOSE OF YOU WHO MAY NOT HAVE BEEN AWARE OR ARE NOT
AWARE OF HOW THE COURT CONDUCTS ITS PRETRIAL CONFERENCES AND
WHAT IT SEEKS TO ACHIEVE IN THESE CONFERENCES, THIS CONFERENCE

09:36:38 1 IS INTENDED TO BE AS SUBSTANTIVE AS POSSIBLE IN ORDER TO
09:36:41 2 RESOLVE AS MANY ISSUES AS POSSIBLE PRIOR TO TRIAL SO AS NOT TO
09:36:47 3 TAKE UP OR WASTE ANY OF THE JURY'S TIME.

09:36:52 4 SO THAT BECAUSE THE COURT REQUIRES IN ITS LOCAL STANDING
09:36:56 5 ORDERS, SUBSTANTIAL SUBMISSIONS WHICH THE COURT HAD THE
09:37:03 6 OPPORTUNITY TO CONSIDER, THIS WILL BE MORE OF A SOLILOQUY THAN
09:37:09 7 A COLLOQUY.

09:37:11 8 AND SO FIRST OF ALL, THE COURT DIRECTS THE PARTIES TO
09:37:15 9 REVIEW THE COURT'S GUIDELINES FOR TRIAL IN CRIMINAL CASES
09:37:21 10 BEFORE TRIAL. AND THE COURT REMINDS THE PARTIES THAT CIVILITY
09:37:27 11 IS PARTICULARLY IMPORTANT IN FRONT OF THE COURT, BUT ESPECIALLY
09:37:30 12 IN FRONT OF THE JURY. WE DO NOT WANT ANY SIDE COMMENTS OR
09:37:38 13 SPEAKING OBJECTIONS, AND I WILL TALK ABOUT THAT LATER ON IN THE
09:37:41 14 PROCEEDINGS.

09:37:43 15 I WANT TO SORT OF START REVERSE CHRONOLOGICAL ORDER WITH
09:37:50 16 THE MOST RECENT FILING THAT WAS FILED BY MR. WENGER'S COUNSEL
09:37:58 17 WHICH IS A DEMAND FOR INSPECTION OF -- AN IN CAMERA INSPECTION
09:38:02 18 OF THE ENTIRE PROSECUTION'S FILE.

09:38:05 19 LET ME ASK MR. KRISHNAMURTHY, HAVE YOU SEEN THAT YET?

09:38:09 20 MR. KRISHNAMURTHY: WE HAVE NOT. WE WERE NOT SERVED
09:38:12 21 WITH THAT.

09:38:13 22 THE COURT: ALL RIGHT. HAVE A SEAT.

09:38:16 23 OBVIOUSLY I'M NOT GOING TO REQUIRE YOU TO RESPOND TO
09:38:21 24 SOMETHING YOU HAVEN'T SEEN, MUCH LESS SOMETHING EVEN IF YOU HAD
09:38:24 25 SEEN IT, IT WOULD HAVE BEEN AT A VERY LATE DATE.

09:38:26 1 SO JUST FOR THE RECORD, AS I MENTION, THE COURT HAS
09:38:29 2 RECEIVED A DEMAND FROM DEFENDANT WENGER FOR THE COURT TO
09:38:33 3 CONDUCT AN IN CAMERA REVIEW OF THE PROSECUTION FILE TO ENSURE
09:38:38 4 IT HAS COMPLIED WITH ITS BRADY OBLIGATIONS.

09:38:43 5 FIRST OF ALL, COUNSEL FOR MR. WENGER SHOULD FILE THE
09:38:45 6 MOTION ON THE DOCKET SO THAT IT MAY BE PRESERVED FOR THE
09:38:52 7 RECORD. HOWEVER, AND I WILL TALK ABOUT THIS MORE AS WE GO
09:38:57 8 FORWARD BECAUSE THIS SEEMS TO BE A CONTINUING PROBLEM, COUNSEL
09:39:00 9 SHOULD NOTE THAT THESE ITERATIVE AND LATE BREAKING MOTIONS ARE
09:39:04 10 DISRUPTIVE AND INAPPROPRIATE. AND ONCE AGAIN, COUNSEL'S
09:39:08 11 CONTENTION OF FACTS ARE NOT APPROPRIATELY SUPPORTED BY A
09:39:13 12 DECLARATION OR AFFIDAVIT AS REQUIRED.

09:39:17 13 THE COURT WILL NOT REVIEW THE PROSECUTION'S FILE IN
09:39:20 14 CAMERA. BRADY IS NOT A DISCOVERY TOOL, IT IS AN OBLIGATION
09:39:24 15 IMPOSED ON THE PROSECUTION TO TURN OVER EXCULPATORY EVIDENCE.

09:39:30 16 NOW THAT SAID, LET ME JUST ASK SINCE I HAVE GOVERNMENT
09:39:33 17 COUNSEL HERE, HAS THE GOVERNMENT COMPLIED WITH ITS OBLIGATIONS
09:39:40 18 UNDER BRADY AND GIGLIO?

09:39:44 19 MR. KRISHNAMURTHY: WE HAVE AND WE CONTINUE TO
09:39:47 20 GENERATE INFORMATION, WE WILL CONTINUE TO DO SO.

09:39:50 21 THE COURT: ALL RIGHT. THANK YOU.

09:39:52 22 AND SO I WOULD -- TO THE EXTENT THAT DEFENSE COUNSEL
09:39:58 23 BELIEVES THAT PROSECUTION HAS EVIDENCE OR HAS THE ABILITY TO
09:40:05 24 OBTAIN EVIDENCE SUCH THAT IT'S CONSTRUCTIVELY IN THE
09:40:09 25 GOVERNMENT'S POSSESSION UNDER APPLICABLE LAW, IT SHOULD MEET

09:40:14 1 AND CONFER WITH GOVERNMENT COUNSEL AND DISCUSS WITH THEM
09:40:20 2 PERHAPS WHAT THE SUBSTANCE OF THEIR MOTION AND WHETHER THE
09:40:23 3 GOVERNMENT HAS SUCH A THING, AND THEN REMEMBER AGAIN BRADY IS
09:40:27 4 NOT A DISCOVERY TOOL, IT'S AN OBLIGATION IMPOSED ON THE
09:40:32 5 GOVERNMENT AND THERE ARE SEVERE REMEDIES THAT ARE AVAILABLE TO
09:40:38 6 THE COURT, SHOULD THAT BE VIOLATED.

09:40:41 7 SO I'M GOING TO LEAVE IT AT THAT. I WILL NOT CONDUCT AN
09:40:45 8 IN CAMERA REVIEW OF THE GOVERNMENT'S FILE. SO THAT'S ALL I'M
09:40:50 9 GOING TO SAY ON THAT SUBJECT RIGHT NOW.

09:40:52 10 AGAIN, JUST TO REITERATE, THE LAST THING WOULD BE I URGE
09:40:55 11 DEFENSE COUNSEL TO HAVE A DISCUSSION WITH GOVERNMENT COUNSEL
09:40:58 12 ABOUT WHAT THEY THINK THEY ARE MISSING SO THAT THE GOVERNMENT
09:41:02 13 DOESN'T INADVERTENTLY -- DOESN'T INADVERTENTLY FAIL TO DISCLOSE
09:41:09 14 INFORMATION THAT IT WOULD IF IT WAS AWARE OF IT, WOULD COMPLY
09:41:17 15 WITH -- FURTHER COMPLY WITH ITS BRADY OBLIGATIONS. I'M GOING
09:41:20 16 TO LEAVE IT AT THAT.

09:41:21 17 NOW I'M GOING TO TALK ABOUT THE PARTIES' PROPOSED PRETRIAL
09:41:25 18 ORDER. BOTH DEFENDANTS ADOPT THE GOVERNMENT'S WITNESS LIST AND
09:41:32 19 RESERVE THE RIGHT TO SUPPLEMENT OR MODIFY THE LIST. AS A
09:41:37 20 REMINDER, PER THE COURT'S STANDING ORDERS, DEFENSE WITNESSES
09:41:41 21 WHO ARE NOT TRUE REBUTTAL WITNESSES ARE CONSIDERED PART OF THE
09:41:44 22 DEFENDANT'S CASE IN CHIEF AND MUST BE DISCLOSED. REBUTTAL
09:41:48 23 EXPERTS MUST ALSO BE DISCLOSED IN ACCORDANCE WITH THE COURT'S
09:41:54 24 STANDING RULES AND THE FEDERAL RULES OF CRIMINAL PROCEDURE.

09:41:58 25 IF THE DEFENDANTS SEEK TO ADD ADDITIONAL WITNESSES WHO

09:42:02 1 HAVE NOT BEEN DISCLOSED, THE COURT WILL REQUIRE THE DEFENDANTS
09:42:07 2 TO SHOW GOOD CAUSE FOR ALLOWING THE SUPPLEMENTATION OF THEIR
09:42:13 3 WITNESS LIST. WE ARE NOT GOING TO BE INVOLVED IN A TRIAL BY
09:42:16 4 AMBUSH HERE.

09:42:19 5 THE NEXT THING I WANT TO TALK ABOUT IS THE TRIAL AND THE
09:42:23 6 SCHEDULE, AND FIRSTLY, THE LENGTH OF TRIAL. ALTHOUGH THE COURT
09:42:27 7 DOES NOT IMPOSE TIME LIMITS IN CRIMINAL TRIALS, THE COURT IS
09:42:32 8 RESERVING TIME COMMENSURATE WITH THE PARTIES' ESTIMATES, THE
09:42:36 9 PARTIES SHOULD LET THE COURT KNOW AS SOON AS POSSIBLE IF THEY
09:42:40 10 WOULD NEED ADDITIONAL TIME.

09:42:42 11 LET ME ASK GOVERNMENT COUNSEL FIRST, SINCE THE RESPONSE TO
09:42:49 12 THE COURT'S ORDER WITH RESPECT TO SCHEDULING, HAS THERE BEEN
09:42:53 13 ANY CHANGE IN THE GOVERNMENT'S ESTIMATE?

09:42:55 14 MR. KRISHNAMURTHY: NO.

09:42:56 15 THE COURT: FROM THE DEFENSE PERSPECTIVE, HAS THERE
09:42:58 16 BEEN ANY CHANGE IN YOUR ESTIMATES OF THE LENGTH OF THE CASE AS
09:43:03 17 IT RELATES TO THE WHOLE CASE AS WELL AS ANY CASE THE DEFENDANTS
09:43:07 18 CHOOSE TO PUT ON?

09:43:08 19 MS. CRANDELL: ON BEHALF OF MR. AMIRI, NO.

09:43:10 20 THE COURT: AND ON BEHALF OF MR. WENGER?

09:43:13 21 MS. LOPES: NO.

09:43:13 22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

09:43:16 23 LET'S TALK ABOUT SCHEDULE NOW BECAUSE WE ARE GOING TO DO
09:43:19 24 SOMETHING A LITTLE BIT DIFFERENT FROM THE WAY THE COURT
09:43:21 25 NORMALLY HANDLES THIS CASE BECAUSE THE COURT HAS OTHER MATTERS

09:43:26 1 AND AVAILABILITY ISSUES LATE IN MARCH AND I WANT TO MAKE SURE
09:43:30 2 THAT COMMENSURATE WITH DUE PROCESS, THIS CASE GETS DONE IN TIME
09:43:34 3 FOR ALL OF THAT.

09:43:35 4 SO FOR THIS CASE, WE WILL SIT MONDAY, WEDNESDAY, THURSDAY
09:43:39 5 AND FRIDAY FROM 8:00 A.M. TO 4:30 P.M. AND ON TUESDAYS FROM
09:43:47 6 8:00 A.M. TO 12:15 IN ORDER TO ACCOMMODATE THE COURT'S
09:43:51 7 CRIMINAL -- REGULAR CRIMINAL CALENDAR.

09:43:55 8 ON MONDAY, MARCH 24TH, WE WILL ADJOURN AT 1:00 P.M. TO
09:43:59 9 GIVE THE GOVERNMENT AND MR. WENGER A BREAK BEFORE THE PRETRIAL
09:44:05 10 CONFERENCE IN THE -268 CASE SO THAT YOU HAVE A LITTLE BIT OF
09:44:10 11 BREATHING ROOM THERE AND THE COURT DOES AS WELL.

09:44:14 12 COUNSEL SHALL ARRIVE BY 7:30 A.M. EVERY TRIAL DAY, AT THE
09:44:19 13 LATEST, TO ADDRESS MATTERS, IF ANY, OUTSIDE OF THE PRESENCE OF
09:44:23 14 THE JURY.

09:44:24 15 WE RESERVE THAT TIME BEFORE THE JURY COMES IN AND ALSO
09:44:29 16 AFTER THE CLOSE OF BUSINESS TO DEAL WITH THOSE KINDS OF
09:44:34 17 MATTERS. I WILL SAY THAT ON THE DAYS WE ARE SITTING AT 4:30,
09:44:38 18 THERE'S PROBABLY NOT GOING TO BE AN AWFUL LOT OF TIME IN
09:44:42 19 DEFERENCE TO COURT'S STAFF AND THE COURT REPORTER, TO DO ANY
09:44:44 20 BUSINESS, SO MOST OF IT WILL BE DONE BEFORE THE JURY COMES IN.

09:44:53 21 NOW I'M GOING TO TALK ABOUT OPENING STATEMENTS. I WOULD
09:44:55 22 LIKE TO ASK THE GOVERNMENT OR THE PARTIES, STARTING WITH THE
09:44:58 23 GOVERNMENT, HOW MUCH TIME THE PARTIES REQUEST FOR OPENING
09:45:01 24 STATEMENT?

09:45:03 25 MR. KRISHNAMURTHY: WE ANTICIPATE THE GOVERNMENT'S

09:45:05 1 OPENING STATEMENT WILL BE 30 TO 45 MINUTES.

09:45:08 2 THE COURT: VERY WELL.

09:45:08 3 AND FROM THE DEFENDANT'S PERSPECTIVE?

09:45:12 4 MR. GOYETTE: ON BEHALF OF MR. AMIRI, I'M ALSO
09:45:15 5 EXPECTING APPROXIMATELY 30 MINUTES.

09:45:16 6 THE COURT: AND ON BEHALF OF MR. WENGER?

09:45:18 7 MS. LOPES: APPROXIMATELY 25 TO 30 MINUTES.

09:45:21 8 THE COURT: OKAY. THANK YOU, YOUR HONOR.

09:45:25 9 THE PARTIES' OPENING STATEMENTS, THIS NEEDS NOT BE SAID
09:45:28 10 BUT I WILL SAY IT ANYWAY, I FIND OCCASIONALLY THAT COUNSEL
09:45:31 11 FORGETS THIS OR DOESN'T COMPLY, THE PARTIES' OPENING STATEMENT
09:45:36 12 SHALL BE CONFINED TO EXPECTED CONTENTS OF WITNESS'S TESTIMONY
09:45:38 13 AND EXHIBITS THAT THEY REASONABLY BELIEVE WILL BE ADMITTED.
09:45:42 14 THE PARTIES ARE NOT TO BE ARGUMENTATIVE OR TO SUGGEST
09:45:45 15 INFERENCES THAT THEY WOULD LIKE THE JURY TO MAKE FROM THE
09:45:49 16 EVIDENCE.

09:45:49 17 I THINK AS A MATTER OF TRIAL PRACTICE, SKILLS, IT'S A BAD
09:45:55 18 HABIT OR BAD IDEA TO DO THAT ANYWAY BUT I DON'T ALLOW IT
09:45:58 19 BECAUSE IT'S NOT APPROPRIATE FOR OPENING STATEMENT.

09:46:01 20 THE COURT WILL REQUIRE THE PARTIES TO EXCHANGE THEIR
09:46:05 21 OPENING STATEMENT, DEMONSTRATIVE AIDS, IF ANY, BY THE CLOSE OF
09:46:09 22 BUSINESS ON THE THURSDAY BEFORE TRIAL AND FILE ANY OBJECTIONS
09:46:13 23 WITH THE COURT BY 4:00 P.M. ON THE FRIDAY BEFORE THE TRIAL. BY
09:46:20 24 TRIAL, I MEAN THAT THE OPENING STATEMENTS AND THE TESTIMONY,
09:46:22 25 ET CETERA, NOT JURY SELECTION.

09:46:31 1 NOW I'M GOING TO TALK ABOUT MOTIONS IN LIMINE. UNLESS I
09:46:33 2 HAVE SPECIFIC QUESTIONS, I WILL NOT PERMIT FURTHER ARGUMENT ON
09:46:37 3 THE MOTION, THERE WILL BE NO FURTHER WRITTEN RULINGS ON THE
09:46:41 4 MOTIONS REGARDING MOTIONS IN LIMINE. MY RULINGS ON MOTIONS IN
09:46:43 5 LIMINE, THE EFFECT OF THOSE RULINGS, WILL BE THE LAW OF THIS
09:46:50 6 CASE. I KNOW THE LAW OF THE CASE DOCTRINE IS AN APPELLATE
09:46:53 7 DOCTRINE, BUT EFFECTIVELY IT'S ALSO THE LAW OF THE CASE FOR THE
09:47:00 8 TRIAL; THEREFORE WHAT FLOWS FROM THAT IS THAT IF ANY PARTY
09:47:04 9 BELIEVES THAT THE OPPOSING PARTY HAS VIOLATED THE COURT'S
09:47:07 10 RULING OR ACTED IN A MANNER THAT REQUIRES THE COURT TO REVISIT
09:47:10 11 THE IN LIMINE RULING, THAT PARTY SHOULD NOT ENGAGE IN SELF-HELP
09:47:15 12 AND SAY TO THEMSELVES OR TO OTHERS, HEY, WE THINK THE OTHER
09:47:19 13 SIDE OPENED THE DOOR AND I'M GOING TO THEREFORE WALK IN AND
09:47:23 14 PRODUCE EVIDENCE THAT WOULD HAVE OTHERWISE BEEN EXCLUDABLE.

09:47:27 15 IF YOU FEEL THAT THAT'S THE CASE, YOU SHOULD ASK --
09:47:30 16 COUNSEL SHOULD ASK THE COURT TO APPROACH FOR SIDEBAR, AND IF I
09:47:36 17 INQUIRE, SIMPLY STATE THAT HE OR SHE WISHES TO ADDRESS AN ISSUE
09:47:41 18 RAISED AT THE PRETRIAL CONFERENCE AND THEN I WILL HEAR ARGUMENT
09:47:44 19 OUTSIDE OF THE PRESENCE OF THE JURY AND DETERMINE WHETHER OR
09:47:48 20 NOT THE DOOR HAS BEEN OPENED TO RECONSIDERING ANY IN LIMINE
09:47:53 21 RULING.

09:47:54 22 NOW I'M GOING TO GO TO THE SPECIFIC IN LIMINE MOTIONS AND
09:48:01 23 THE COURT'S RULING WITH RESPECT TO THOSE.

09:48:03 24 SO THE FIRST ONE IS THE MOTION TO ADMIT EVIDENCE, AND
09:48:09 25 THESE ARE THE GOVERNMENT'S MOTION'S FIRST WHICH TRADITIONALLY

09:48:13 1 THE COURT RULES ON FIRST.

09:48:14 2 THE GOVERNMENT'S MOTION TO ADMIT EVIDENCE WHICH IS
09:48:17 3 INEXTRICABLY INTERTWINED AND/OR PURSUANT TO FEDERAL RULE OF
09:48:21 4 EVIDENCE SECTION 404(B) .

09:48:23 5 IN RESOLVING THIS MOTION, THE COURT DID NOT CONSIDER AND
09:48:28 6 WILL NOT CONSIDER THE UNAUTHORIZED SUPPLEMENTAL BRIEF FILED BY
09:48:33 7 COUNSEL FOR MR. WENGER AT DOCKET NUMBER 294.

09:48:38 8 PARAGRAPH 6(G) OF THE COURT'S STANDING ORDERS FOR CRIMINAL
09:48:41 9 CASES REQUIRES OPPOSITIONS TO MOTIONS IN LIMINE TO BE SERVED ON
09:48:46 10 OPPOSING COUNSEL 20 DAYS BEFORE THE PRETRIAL CONFERENCE AND
09:48:49 11 FILED WITH THE COURT 14 DAYS BEFORE THE PRETRIAL CONFERENCE.

09:48:55 12 MS. CASTRONOVO FILED THE SUPPLEMENTAL BRIEF ONLY FOUR DAYS
09:49:01 13 BEFORE THE PRETRIAL CONFERENCE, SO THE COURT WILL NOT AND DOES
09:49:04 14 NOT CONSIDER IT.

09:49:06 15 THE SAME PARAGRAPH OF THE COURT'S STANDING ORDERS PLACES
09:49:09 16 STRICT LIMITS ON THE NUMBER AND LENGTH OF BRIEFS AND REQUIRES
09:49:13 17 LEAVE TO DEVIATE FROM THOSE LIMITS. THE COURT DOES NOT PERMIT
09:49:18 18 REPLY BRIEFING. BY FILING A SUPPLEMENTAL BRIEF OUT OF TIME AND
09:49:24 19 OUT OF LEAVE OF COURT, MS. CASTRONOVO VIOLATED THESE LIMITS,
09:49:28 20 AND THE COURT DOES NOT TAKE THAT VIOLATION LIGHTLY.

09:49:31 21 THIS IS NOT THE FIRST TIME THAT COUNSEL, MS. CASTRONOVO,
09:49:34 22 HAS FILED BRIEFS ON MOTIONS NOT PERMITTED BY THE COURT'S ORDERS
09:49:38 23 OR PROCEDURES. THIS IS NOT THE FIRST TIME THAT THE COURT HAS
09:49:41 24 DECLINED TO CONSIDER OR EVEN STRUCK A FILING BY MS. CASTRONOVO.

09:49:47 25 IT IS INAPPROPRIATE TO CLUTTER THE DOCKET WITH EXTRANEOUS

09:49:51 1 FILINGS INSTEAD OF MAKING ARGUMENTS IN THE FORM AND PROCESS
09:49:56 2 CONTEMPLATED AND REQUIRED BY THE COURT'S ORDERS AND RULES OF
09:49:59 3 PROCEDURE. IT IS UNFAIR TO THE OTHER PARTIES, IT BOGS DOWN THE
09:50:03 4 COURT AND CAUSES DELAYS WHICH THE COURT DOES NOT APPRECIATE.

09:50:09 5 THE COURT HEREBY ADMONISHES MS. CASTRONOVO AND MR. WENGER
09:50:14 6 AND WARNS THAT FURTHER SUCH FILINGS, MEANING FILINGS NOT
09:50:17 7 ALLOWED BY THE FEDERAL RULES, BY THIS COURT'S STANDING ORDERS
09:50:20 8 OR OTHERWISE NOT AUTHORIZED BY A LEAVE OF COURT, WILL RESULT IN
09:50:23 9 AN ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED,
09:50:27 10 INCLUDING MONETARY SANCTIONS, ON EITHER OR BOTH MS. CASTRONOVO
09:50:31 11 AND/OR MR. WENGER.

09:50:36 12 TO THE GOVERNMENT, I HAVE A QUESTION, HOW MUCH TIME DOES
09:50:39 13 THE GOVERNMENT ESTIMATE IT WILL TAKE TO INTRODUCE EVIDENCE
09:50:42 14 ABOUT THE INCIDENCE REFERENCED IN THE GOVERNMENT'S MOTIONS IN
09:50:50 15 LIMINE TO ADMIT THIS EVIDENCE THAT I'VE DESCRIBED?

09:50:53 16 MR. KRISHNAMURTHY: SO THE FORM OF THE EVIDENCE FOR
09:50:54 17 EACH OF THE INCIDENTS IS GOING TO BE SLIGHTLY DIFFERENT. I
09:50:59 18 DON'T HAVE AN ESTIMATE OF ALL OF THIS TOGETHER BUT I WILL SAY
09:51:03 19 THAT WE ARE STILL INCLUDING THIS EVIDENCE COMFORTABLY WITHIN
09:51:08 20 THE INITIAL ESTIMATE THAT WE PROVIDED THE COURT.

09:51:11 21 THE COURT: WELL THE REASON I ASK THE QUESTION,
09:51:13 22 COUNSEL, IS THAT AS YOU KNOW, ONE OF THE -- THE COURT ALWAYS
09:51:19 23 HAS DISCRETION UNDER RULE 403 TO EXCLUDE EVIDENCE BASED UPON
09:51:27 24 WASTING COURT RESOURCES OR IMPOSING TOO MUCH TIME FOR IT.

09:51:32 25 AND SO ONE OF THE BALANCING TESTS THAT THE COURT CONSIDERS

09:51:36 1 IS ESSENTIALLY TAKING AS A CORE, OR SEPARATELY THIS EXTRA, I
09:51:41 2 WILL CALL IT EXTRA EVIDENCE FOR EASE OF CHARACTERIZATION,
09:51:45 3 VERSUS THE CORE EVIDENCE AND DETERMINING.

09:51:48 4 SO FOR EXAMPLE, IF IT WAS 50/50 OR EVEN 70/30, 30 PERCENT
09:51:55 5 BEING THE EXTRA, THE COURT MIGHT USE THAT AS A ONE FACTOR TO
09:51:59 6 DETERMINE IN WHETHER TO EXERCISE ITS DISCRETION UNDER 403. SO
09:52:05 7 WITH THAT IN MIND, ARE YOU TELLING ME YOU STILL DON'T HAVE SUCH
09:52:08 8 AN ESTIMATE?

09:52:09 9 MR. KRISHNAMURTHY: PERHAPS I COULD GO THROUGH EACH
09:52:11 10 ONE AND DESCRIBE FOR THE COURT WHAT EVIDENCE AND HOW LONG IT
09:52:13 11 WILL TAKE.

09:52:14 12 THE COURT: ALL RIGHT. BRIEFLY, PLEASE DO THAT.

09:52:16 13 MR. KRISHNAMURTHY: SURE.

09:52:18 14 SO FOR THE JULY 7, 2019 ARREST, WE ANTICIPATE PLAYING A
09:52:22 15 BRIEF VIDEO OF ABOUT FIVE MINUTES AND HAVING TESTIMONY FROM A
09:52:26 16 WITNESS WHO WILL ALREADY BE TESTIFYING ABOUT TEN MINUTES ABOUT
09:52:30 17 THIS.

09:52:31 18 THE COURT: SO 15 MINUTES TOTAL?

09:52:33 19 MR. KRISHNAMURTHY: CORRECT.

09:52:33 20 THE COURT: ALL RIGHT.

09:52:37 21 MR. KRISHNAMURTHY: FOR THE OCTOBER 2019 ARREST, WE
09:52:40 22 ANTICIPATE HAVING BRIEF TESTIMONY OF ABOUT FIVE MINUTES FROM A
09:52:43 23 WITNESS WHO WILL ALREADY BE TESTIFYING.

09:52:48 24 FOR THE JANUARY 3RD, 2020 ARREST, WE ANTICIPATE ABOUT TEN
09:52:52 25 MINUTES OF TESTIMONY FROM A WITNESS WHO WILL ALREADY BE

09:52:57 1 TESTIFYING, AS WELL AS PERHAPS TEN MINUTES OF TEXT MESSAGES.

09:53:10 2 FOR THE AUGUST 22ND, 2020 ARREST, WE ANTICIPATE ABOUT A
09:53:15 3 TEN-MINUTE VIDEO AS WELL AS ABOUT FIVE MINUTES OF TEXT
09:53:21 4 MESSAGES.

09:53:25 5 AND FOR THE JANUARY 26TH, 2022 ARREST, WE ANTICIPATE ABOUT
09:53:36 6 TEN MINUTES OF TESTIMONY FROM A WITNESS WHO WILL ALREADY BE
09:53:41 7 TESTIFYING, AS WELL AS ABOUT FIVE MINUTES OF TEXT MESSAGES.

09:53:57 8 THE COURT: SO THE COURT'S ANALYSIS, WHICH I WILL
09:54:03 9 TAKE UNDER ADVISEMENT AT THIS POINT, I'M GOING TO DOUBLE THAT
09:54:05 10 TIME, AGAIN WITHOUT LIMITING THE DEFENSE IN ITS
09:54:11 11 CROSS-EXAMINATION, BUT JUST FOR PURPOSES OF CALCULATION, TO
09:54:15 12 DOUBLE THAT TIME THAT THE GOVERNMENT JUST ESTIMATED TO INCLUDE
09:54:20 13 ANY POTENTIAL CROSS-EXAMINATION, WITH THE NOTION THAT THE
09:54:27 14 DEFENSE IS OBVIOUSLY LIMITED.

09:54:31 15 SO THE QUICK ESTIMATE, AGAIN I WAS RUNNING DOWN AND
09:54:33 16 CALCULATING, IT WAS ABOUT AN HOUR AND TEN MINUTES, SO THAT WILL
09:54:38 17 BE TWO HOURS AND TWENTY MINUTES TOTAL WITH CROSS-EXAMINATION.

09:54:40 18 SO I WILL TAKE THAT UNDER ADVISEMENT AND THAT WILL BE
09:54:46 19 SUBJECT TO -- THAT WILL MAKE THE RULINGS THAT I'M ABOUT TO MAKE
09:54:51 20 SUBJECT TO MY CONSIDERATION OF A 403 SITUATION, ESPECIALLY IF
09:54:54 21 AS THE TRIAL EVOLVES IT BECOMES -- WE GET INVOLVED IN MINI
09:54:58 22 TRIALS ON THESE OTHER ISSUES, THEN I WILL RECONSIDER.

09:55:04 23 SO HERE'S THE SPECIFIC RULING: SO THE MOTION, I WILL SAY
09:55:09 24 AS A GENERAL MATTER, IS GRANTED. THE GOVERNMENT'S MOTION TO
09:55:13 25 ADMIT EVIDENCE IS GRANTED IN PART, AS FOLLOWS:

THE COURT FINDS THAT THE INCIDENTS IN OCTOBER 2019 AND JANUARY 3RD, 2020, ON AUGUST 22ND, 2020 AND ON JANUARY 26, 2022 ARE INTRINSIC TO THE CONSPIRACY CHARGE. ALL APPEAR TO INVOLVE THE USE OF EXCESSIVE FORCE AND COMMUNICATION BRAGGING ABOUT THE SAME BETWEEN ONE OR BOTH OF THE DEFENDANTS AND OTHER OFFICERS. SO THOSE ARE ADMITTED.

THE GOVERNMENT HAS NOT DEMONSTRATED, HOWEVER, THAT THE JULY 7, 2019 ARREST BY MR. WENGER IS INTRINSIC TO THE ALLEGED CONSPIRACY, AND THE COURT WILL THEREFORE NOT ADMIT THAT UNDER THE INEXTRICABLY INTERTWINED CONCEPT BUT WILL CONSIDER -- WILL EVALUATE THE EVIDENCE UNDER RULE 404(B).

NOW THE NINTH CIRCUIT IMPOSES A FOUR-PART TEST TO DETERMINE WHETHER OTHER EVIDENCE MAY BE ADMITTED. "SUCH EVIDENCE MAY BE ADMITTED IF:

ONE, THE EVIDENCE TENDS TO PROVE A MATERIAL POINT.

TWO, THE OTHER ACT IS NOT TOO REMOTE IN TIME.

THREE, THE EVIDENCE IS SUFFICIENT TO SUPPORT A FINDING THAT DEFENDANT COMMITTED THE OTHER ACT.

AND FOUR, IN CERTAIN CASES, THE ACT IS SIMILAR TO THE OFFENSE CHARGED."

AND I'M QUOTING THERE, UNITED STATES V. BAILEY, 696 F.3D, 794 AT 799, 2012.

TO PROVE MATERIALITY, THE GOVERNMENT "MUST ARTICULATE PRECISELY THE EVIDENTIAL HYPOTHESIS BY WHICH A FACT OF CONSEQUENCE MAY BE INFERRED FROM THE OTHER ACTS'S EVIDENCE."

MEANING, "THE GOVERNMENT MUST PROVE A LOGICAL CONNECTION BETWEEN THE KNOWLEDGE GAINED AS A RESULT OF THE COMMISSION OF THE PRIOR ACT AND THE KNOWLEDGE AT ISSUE IN THE CHARGED ACT."

AND FOR THAT THE COURT IS CITING THE NINTH CIRCUIT CASE OF UNITED STATES V. MAYANS, M-A-Y-A-N-S. 17 F.3D, 1174 AT 1181 THROUGH 82, DECIDED IN 1994.

THE COURT WILL PERMIT EVIDENCE REGARDING THE REMEDIAL TRAINING MR. WENGER UNDERTOOK FOLLOWING THE ARREST AS EVIDENCE OF MR. WENGER'S KNOWLEDGE OR INTENT IN THE CHARGED CONDUCT.

THE GOVERNMENT HAS DEMONSTRATED A DIRECT CONNECTION BETWEEN THE REMEDIAL TRAINING AND MR. WENGER'S KNOWLEDGE OR INTENT IN LATER ALLEGED MISCONDUCT, INCLUDING THE -- HIS PARTICIPATION IN THE ALLEGED CONSPIRACY AND IN THE ALLEGED USE OF FORCE IN COUNT 8.

THE INCIDENT IS NOT REMOTE IN TIME AND IS ENCOMPASSED BY THE SCOPE OF THE CONSPIRACY. THE ACT IS SIMILAR TO THE OTHER OFFENSES CHARGED. HOWEVER, UNLIKE WITH OTHER ALLEGATIONS REPORTING TO CONSPIRACY, THE GOVERNMENT HAS NOT PROVIDED ANY INFORMATION REGARDING MR. WENGER'S COMMUNICATIONS ABOUT THE USE OF FORCE CLOSE IN TIME TO THE EVENT.

EVIDENCE REGARDING THE INCIDENT MAY ALSO LEAD THE JURY TO MAKE AN IMPERMISSIBLE INFERENCE THAT BECAUSE MR. WENGER ACTED VIOLENTLY, HE HAS VIOLENT CHARACTERISTICS AND THEREFORE ACTED WITH EXCESSIVE FORCE DURING THE CRIME ALLEGED IN COUNT 8.

THE COURT WILL NOT PERMIT EVIDENCE OF THE DETAILS OF THE

ARREST, OR ALLEGEDLY THE DETAILS OF THE ARREST, OR ALLEGEDLY
FALSIFYING THE POLICE REPORT UNLESS AND UNTIL THE GOVERNMENT
PROVIDES EVIDENCE TO THE COURT'S SATISFACTION CONNECTING THE
CONDUCT TO THE CONSPIRACY TO VIOLATE RIGHTS, THAT WILL OCCUR IN
THE COURSE OF THE TRIAL IN A DETAILED OFFER OF PROOF WHEN THE
COURT IS READY TO INDUCE THAT EVIDENCE AND THE COURT WILL THEN
CONSIDER IT AT THE MOMENT -- AT THAT MOMENT.

BUT SHOULD THE COURT REVISIT THIS DECISION, THE COURT WILL
REQUIRE A LIMITING INSTRUCTION TO PREVENT USE OF THE INCIDENT
AS EVIDENCE OF WENGER'S GUILT IN COUNT 8. AND THE COURT WILL
REQUIRE THE GOVERNMENT IN THAT INSTANCE TO, IN THE FIRST
INSTANCE, TO DRAFT SUCH AN INSTRUCTION, A LIMITING INSTRUCTION,
AND TO RUN IT BY DEFENSE COUNSEL IN AN EFFORT TO COME TO AN
AGREEMENT ON THAT.

AGAIN, THE COURT WILL ALLOW EVIDENCE OF THE REMEDIAL
TRAINING TO COME IN FOR BOTH COUNT 1 AND COUNT 8.

NEXT MOTION. MOTION TO ADMIT EVIDENCE AS TO DEFENDANT
MORTEZA AMIRI PURSUANT TO FEDERAL RULE OF EVIDENCE 404(B).

THAT MOTION TO ADMIT EVIDENCE WITH RESPECT TO DEFENDANT
AMIRI IS GRANTED -- IS DENIED, EXCUSE ME, IS DENIED.

THE GOVERNMENT CONTENDS THAT MR. AMIRI GAINED KNOWLEDGE OF
HIS PRIOR ALLEGED FALSITIES, THAT "HE WOULD BE ABLE TO EVADE
SCRUTINY AND MANIPULATE EXTERNAL REVIEW SYSTEMS BY FALSIFYING
POLICE REPORTS." THAT'S MOTION IN LIMINE NUMBER 1, AT PAGE 4,
LINES 10 THROUGH 11.

1 IN OTHER WORDS, BECAUSE MR. AMIRI BELIEVED HE GOT AWAY
2 WITH THE ALLEGED FALSITIES IN 2019, WHICH ARE THE SUBJECT OF
3 COUNT 9, HE HAD KNOWLEDGE THAT HE COULD GET AWAY WITH OTHER
4 FALSITIES IN 2020. THE GOVERNMENT ALSO CONTENDS THAT THE
5 EVIDENCE DEMONSTRATE THE INTENTIONALITY OF THE ALLEGED
6 FALSITIES IN THE 2019 REPORT.

7 THE INTENT REQUIREMENT FOR COUNT 9 IS THAT THE DEFENDANT
8 "KNOWINGLY, ALTERED, DESTROYED, CONCEALED OR FALSIFIED A
9 RECORD, DOCUMENT OR TANGIBLE OBJECT," AND "ACTED WITH THE
10 INTENT TO IMPEDE, OBSTRUCT OR INFLUENCE AN ACTUAL OR
11 CONTEMPLATED INVESTIGATION OF A MATTER WITHIN THE JURISDICTION
12 OF ANY DEPARTMENT OR AGENCY OF THE UNITED STATES." AND THAT'S
13 STIPULATED JURY INSTRUCTION NUMBER 57. "THE DEFENDANT'S
14 INTENTION TO OBSTRUCT JUSTICE MUST BE SUBSTANTIAL." AND THAT'S
15 THE PREVIOUS CITATION.

16 ELEMENTS TWO AND THREE OF THE 404(B) TEST ARE SATISFIED
17 BECAUSE MR. AMIRI'S OTHER ACTS ARE NOT REMOTE IN TIME AND THERE
18 IS SUFFICIENT EVIDENCE BY MR. AMIRI'S OWN ADMISSIONS TO SHOW
19 THAT MR. AMIRI COMMITTED THE OTHER ACTS. HOWEVER, THE
20 GOVERNMENT FALTERS ON ELEMENTS ONE AND FOUR THAT THE EVIDENCE
21 TENDS TO PROVE A MATERIAL POINT AND THE ACTS WERE SUFFICIENTLY
22 SIMILAR.

23 THE SIMILARITY ARGUMENT BOILS DOWN TO THIS, AMIRI LIED
24 KNOWINGLY TWICE SO HE MUST HAVE LIED KNOWINGLY A THIRD TIME,
25 WHICH UNDER THE LATIN DOCTRINE, FALSUS IN UNO, FALSUS IN

OMNIBUS, ONCE A LIAR, ALWAYS A LIAR. THE GOVERNMENT OFFERS NOTHING MORE TO CONNECT THE ACTS OTHER THAN THAT MAXIM, ALTHOUGH THEY DIDN'T USE THE LATIN PHRASE, MOST PEOPLE DON'T.

SPECIFICALLY, THE COURT FINDS THAT THE OTHER ACT EVIDENCE RELATING TO MR. AMIRI, ALLEGEDLY SEIZING MARIJUANA FOR PERSONAL CONSUMPTION, IS IMPROPER CHARACTER EVIDENCE AND WOULD SERVE ONLY TO SUGGEST THAT MR. AMIRI HAS CRIMINAL PROPENSITIES AND NOT ANY "MATERIAL POINT."

FALSIFYING A POLICE REPORT TO CONCEAL THEFT OF MARIJUANA IS MATERIALLY DIFFERENT THAN FALSIFYING A POLICE REPORT TO CONCEAL THE PRESENCE OF ANOTHER POLICE OFFICER DURING A USE OF FORCE INCIDENT.

MR. AMIRI IS NOT CHARGED WITH DRUG USE OR UNLAWFUL SEIZURE AND INTRODUCTION OF EVIDENCE RELATING TO HIS CONSUMPTION OF MARIJUANA MAY CONFUSE OR INFLAME THE JURY.

MR. AMIRI'S STATEMENT THAT HE "SOMETIMES JUST SAYS PEOPLE GAVE MR. AMIRI A FULL CONFESSION WHEN THEY DIDN'T" SO THAT CASES "GET FILED FASTER," LIKEWISE SERVES TO SHOW THAT FROM THE GOVERNMENT'S PERSPECTIVE, THAT MR. AMIRI IS A LIAR WHO LIES IN POLICE REPORTS. IT DOES NOT DEMONSTRATE THAT MR. AMIRI GAINED ANY KNOWLEDGE FROM FALSIFYING REPORTS WHICH HELPED HIM TO FALSIFY THE REPORT IN COUNT 9. TO THE EXTENT THE STATEMENTS REFLECT MR. AMIRI'S INTENT TO OBSTRUCT JUSTICE, AS ALLEGED IN COUNT 9, IT IS OF MARGINAL PROBATIVE VALUE.

ADDITIONALLY THE COURT IS CONCERNED OF THE POSSIBILITY OF

EVIDENCE OF MULTIPLE CONSPIRACIES BEYOND THE ONE CHARGED IN THE
INDICTMENT.

NOT ALL BAD ACTS ALLEGEDLY PERFORMED BY THE DEFENDANTS
WILL COME IN AT TRIAL TO PROVE COUNT 1 OR TO PROVE INTENT FOR
THE REMAINING COUNTS, ONLY ACTS THAT ARE OF THE SAME ILK AS THE
ONES CHARGED.

NEXT. MOTION TO EXCLUDE TESTIMONY OF BETH CHRISMAN,
C-H-R-I-S-M-A-N, JASON HAWKS, H-A-W-K-S, AND ROBERT MCFARLANE,
M-C-F-A-R-L-A-N-E, IS GRANTED IN PART. MS. CHRISMAN'S PROPOSED
TESTIMONY REGARDING HANDWRITING IS IRRELEVANT, AND KNOWING THE
QUESTION IS IRRELEVANT TO THE CASE AND MENTIONING OF THE
STEROID DISTRIBUTION CASE COULD RESULT IN PREJUDICE TO THE
DEFENDANTS. MR. WENGER'S PURPORTED USE OF THE TESTIMONY TO
CHALLENGE THE CREDIBILITY OF THE INVESTIGATION CONFLICTS WITH
THE COURT'S REPEATED RULINGS THAT IS INSPECTOR WALLACE'S
INVESTIGATION AND STATE WARRANT DID NOT TAINT THE FEDERAL CASE.

MR. HAWK'S PROPOSED TESTIMONY ABOUT MR. WENGER'S PHONE AND
DEFECTS IN THE STATE WARRANT IS ALSO IRRELEVANT. THE COURT HAS
RULED REPEATEDLY THAT INSPECTOR WALLACE'S ALLEGED FAILURES TO
COMPLY WITH THE CAL ECPA IN SEEKING THE STATE WARRANT HAVE NO
BEARING ON THE SUBSEQUENT FEDERAL WARRANTS, AND THAT IN ANY
EVENT, THE POINT IS MOOT BECAUSE THE GOVERNMENT AGREED NOT TO
INTRODUCE EVIDENCE DERIVED FROM THE SEARCHES OF MR. WENGER'S
CELL PHONE.

MR. WENGER MAY NOT REARGUE THESE MOTIONS TO THE JURY UNDER

1 THE GUISE OF CHALLENGING THE LEGITIMACY OF THE INVESTIGATION AS
2 A WHOLE.

3 MR. MCFARLAND'S TESTIMONY MAY BE RELEVANT, ALTHOUGH IT IS
4 UNCLEAR TO THE COURT AS TO WHAT CHARGE OR DEFENSE.

5 THE COURT ORDERS DEFENSE COUNSEL TO PRODUCE THE
6 "SYNCHRONIZED AUDIO AND VIDEO MATRIX" TO THE GOVERNMENT BY
7 WEDNESDAY, FEBRUARY 12TH BY 5 P.M. FAILURE TO DO SO MAY RESULT
8 IN EXCLUSION. THE GOVERNMENT MAY RENEW ITS MOTION IN LIMINE BY
9 FRIDAY, FEBRUARY 14TH 2025 BY 4 P.M.

10 I DO NOT NEED A FURTHER RESPONSE FROM THE DEFENDANTS TO
11 THE GOVERNMENT'S RENEWED MOTION. IF I NEED IT, I WILL ORDER
12 IT, BUT RIGHT NOW I'M NOT ORDERING IT.

13 4. MOTION TO LIMIT AND EXCLUDE EXPERT TESTIMONY ON THE
14 USE OF FORCE. THAT MOTION IS GRANTED. THE ANTICIPATED
15 TESTIMONY OF MR. GLEN AND MR. PFANNENSTIEL,
16 P-F-A-N-N-E-N-S-T-I-E-L, INTRUDES UPON THE PROVINCE OF THE JURY
17 AND REACH ULTIMATE LEGAL CONCLUSIONS WHICH IS NOT PERMISSIBLE.

18 MR. GLEN AND MR. PFANNENSTIEL MAY NOT TESTIFY WHETHER THEY
19 BELIEVE THE DEFENDANT'S USE OF FORCE WAS "REASONABLE,"
20 "JUSTIFIED," "NOT CRIMINAL," OR "LAWFUL." THEY MAY FURTHER NOT
21 TESTIFY AS TO THE DEFENDANT'S MENTAL STATE OR AS TO ANY LEGAL
22 STANDARDS.

23 MR. GLEN AND MR. PFANNENSTIEL MAY TESTIFY REGARDING
24 GENERAL POLICE POLICIES AND PROFESSIONAL STANDARDS OF PRACTICE
25 BUT SHALL NOT APPLY THE STANDARDS TO THE SPECIFIC FACTS OF THIS

10:07:28 1 CASE. THAT ADMONITION INCLUDES HYPOTHETICALS. COUNSEL MAY NOT
10:07:34 2 TRY TO ELICIT TESTIMONY REGARDING APPLICATION OF GENERAL
10:07:38 3 STANDARDS TO HYPOTHETICALS THAT TRAP THE FACTS PRESENTED BY THE
10:07:41 4 PARTIES.

10:07:44 5 COUNSEL MAY, HOWEVER, ELICIT TESTIMONY REGARDING THE FACTS
10:07:48 6 IN THIS CASE AS TO WHETHER LESSER FORCE ALTERNATIVES WERE
10:07:51 7 AVAILABLE IN ANY INJURIES THAT THEY OBSERVED.

10:07:57 8 THEY MAY ALSO TESTIFY AS TO THE DEFENDANT'S TRAINING OR
10:08:00 9 THE ANTIOCH POLICE DEPARTMENT'S POLICIES.

10:08:05 10 NUMBER 5. MOTION TO PRECLUDE IRRELEVANT ATTEMPTS TO
10:08:08 11 ENCOURAGE JURY NULLIFICATION. GRANTED. THE PARTIES SHALL NOT
10:08:13 12 APPEAL TO THE JURY'S SYMPATHY OR REFERENCE POTENTIAL
10:08:16 13 PUNISHMENT.

10:08:17 14 MR. WENGER SOUGHT DISMISSAL ON THE BASIS OF SELECTIVE
10:08:21 15 PROSECUTION AND THE COURT DENIED THE MOTION. HE MAY NOT
10:08:24 16 REARGUE THAT THEORY TO THE JURY.

10:08:27 17 NOW I WANT TO TURN TO MR. AMIRI'S MOTIONS IN LIMINE.

10:08:32 18 FIRST, MOTION TO EXCLUDE STATEMENTS OF CO-CONSPIRATORS.
10:08:32 19 DENIED.

10:08:37 20 THE GOVERNMENT HAS PRODUCED ENOUGH EVIDENCE OF CONSPIRACY
10:08:42 21 VELNON, AND THAT AS AN EVIDENTIARY MATTER. COCONSPIRATOR
10:08:48 22 STATEMENTS ARE ADMISSIBLE UNDER FEDERAL RULE OF EVIDENCE
10:08:51 23 801(D) (2) (E) .

10:08:54 24 NUMBER 2. MOTION TO EXCLUDE UNFAIRLY PREJUDICIAL
10:08:58 25 LANGUAGE. GRANTED IN PART.

1 THE COURT AGREES THAT THE WORD "FAGGOT" IN EXHIBITS 902
2 AND 932 IS INFLAMMATORY. HOWEVER, INCLUSION OF THE WORD IS
3 MORE PROBATIVE THAN PREJUDICIAL AS IT RELATES TO THE
4 GOVERNMENT'S THEORY OF INTENT. THE GOVERNMENT MAKES REFERENCE
5 TO A NUMBER OF EXCHANGES IN WHICH MR. AMIRI OR OTHERS USED THE
6 "N WORD," AND SADLY WE ALL KNOW WHAT THAT MEANS, OR REFERRED TO
7 BLACK PEOPLE AS "GORILLAS". THE COURT WAS UNABLE TO LOCATE
8 THESE EXCHANGES IN THE EXHIBITS IDENTIFIED BY MR. AMIRI. THE
9 GOVERNMENT STATES THAT IT DOES NOT INTEND TO USE THOSE
10 STATEMENTS IN ITS CASE IN CHIEF, SO MR. AMIRI'S MOTION IS MOOT
11 ON THAT POINT.

12 AND AS AN ASIDE, THE GOVERNMENT WILL NOT ALLOW ANY
13 EVIDENCE ABOUT THE ALLEGED USE OF THAT WORD OR THOSE WORDS, AS
14 THEY ARE EXTREMELY PREJUDICIAL AND NOT -- AND THE PREJUDICE
15 OUTWEIGHS ANY PROBATIVE EFFECT.

16 3. THE MOTION TO EXCLUDE REFERENCE TO DEFENDANT'S
17 TERMINATION AND EMPLOYMENT STATUS. THAT MOTION IS GRANTED.

18 THE FACT THAT MR. AMIRI'S TERMINATION FROM THE ANTIOCH
19 POLICE DEPARTMENT WILL BE ADMISSIBLE ONLY FOR IMPEACHMENT.
20 WITH A REMINDER, IT IS THE COURT, NOT THE GOVERNMENT, WHO
21 DETERMINES WHETHER AMIRI HAS OPENED THE DOOR TO THAT EVIDENCE.
22 EVIDENCE OF DISCIPLINE OR TRAINING WHILE ON THE FORCE WILL NOT
23 BE EXCLUDED.

24 4. MOTION TO EXCLUDE EVIDENCE OF PRIOR CONVICTION.

25 IF MR. AMIRI DECIDES TO TESTIFY AT TRIAL, EVIDENCE OF HIS

10:10:38 1 CONVICTION OF WIRE FRAUD IS ADMISSIBLE UNDER RULE 609(A) (2) OF
10:10:43 2 THE FEDERAL RULES OF EVIDENCE BECAUSE IT INVOLVED THE DISHONEST
10:10:47 3 ACT OR FALSE STATEMENT.

10:10:50 4 THE COURT WILL PROVIDE A LIMITING INSTRUCTION TO ENSURE
10:10:52 5 EVIDENCE OF THE CONVICTION MAY BE CONSIDERED ONLY FOR
10:10:56 6 IMPEACHMENT PURPOSES.

10:10:59 7 SO THAT IS -- THOSE ARE THE COURT'S RULINGS WITH RESPECT
10:11:04 8 TO IN LIMINE MOTIONS. THE COURT WILL NOT ISSUE ANY FURTHER
10:11:08 9 WRITTEN RULING. I COMMEND YOU TO THE MINUTES OF THE COURTROOM
10:11:18 10 DEPUTY, BUT THERE WILL NOT BE ANY FURTHER WRITTEN RULING.
10:11:21 11 THERE WILL NOT BE ANY WRITTEN RULING ON THOSE POINTS BECAUSE
10:11:25 12 THEY ARE WELL BRIEFED AND DOCUMENTED BY THE PARTIES.

10:11:28 13 NOW I WANT TO TALK ABOUT JURY ISSUES. AND FIRST, THE JURY
10:11:32 14 CERTIFICATION FORM. I WOULD LIKE TO -- HAVE WE GIVEN COUNSEL
10:11:37 15 YET THE CERTIFICATION FORMS? YES, YOU HAVE THEM.

10:11:41 16 NOW AGAIN, THIS FORM, JUST TO MENTION TO YOU, IS KIND
10:11:44 17 OF -- IT DOESN'T HAVE ANY LEGAL EFFECT, BUT IT INFORMS THE
10:11:53 18 JURY, EMPHASIZES TO THE JURY THE IMPORTANCE OF ITS CONDUCT
10:11:56 19 DURING THE TRIAL.

10:11:58 20 DOES THE GOVERNMENT HAVE ANY OBJECTION TO THE
10:12:00 21 CERTIFICATION?

10:12:05 22 MR. KRISHNAMURTHY: NO OBJECTION.

10:12:06 23 THE COURT: MR. GOYETTE?

10:12:09 24 MR. GOYETTE: NO OBJECTION, YOUR HONOR.

10:12:10 25 MS. CRANDELL: NO OBJECTION.

10:12:11 1 THE COURT: THANK YOU VERY MUCH.

10:12:13 2 NOW REGARDING JURY SELECTION, FIRST OF ALL, I WILL CONDUCT
10:12:19 3 QUESTIONING AT THE VOIR DIRE, BUT I WILL CONDUCT -- I WILL
10:12:24 4 PERMIT THE PARTIES TO GIVE A BRIEF FOLLOW-UP QUESTIONING AS
10:12:28 5 APPROPRIATE, BUT THOSE QUESTIONS SHOULD NOT BE USED AS AN
10:12:31 6 OPPORTUNITY TO PRE-ARGUE THE CASE. THE QUESTIONS SHOULD BE
10:12:34 7 LIMITED TO FACTS THAT ARE ADDUCED DURING THE COURT'S
10:12:37 8 QUESTIONING OR ON THE QUESTIONNAIRES, BUT SHOULD NOT BE USED TO
10:12:45 9 ARGUE OR TEST THE JURY'S VIEWS WITH RESPECT TO LEGAL THEORIES
10:12:49 10 OR TRY TO ENURE THE JURY TO ONE SIDE'S THEORY OF THE CASE OR
10:12:52 11 THEME OR THE OTHER SIDE'S THEORY OF THE CASE OR THEME.

10:13:02 12 NOW I WANT TO ASK, IS IT MS. CRANDELL? COULD YOU COME UP,
10:13:09 13 PLEASE, THANK YOU VERY MUCH.

10:13:10 14 I WOULD LIKE TO ASK YOU WHAT EXACTLY MR. AMIRI IS
10:13:12 15 REQUESTING, IN TERMS OF VOIR DIRE, THAT DIFFERS FROM THE
10:13:15 16 COURT'S PROCEDURE OF READING THE IN LIMINE -- I'M SORRY,
10:13:19 17 READING THE VOIR DIRE, DOING ANY NECESSARY FOLLOW-UP, AND THEN
10:13:23 18 ALLOWING COUNSEL TO DO ITS OWN FOLLOW-UP?

10:13:27 19 MS. CRANDELL: I THINK THAT WAS THE FOCUS OF OUR
10:13:29 20 REQUEST, YOUR HONOR. SO AS LONG AS YOU ARE ALLOWING FOLLOW-UP
10:13:32 21 QUESTIONS CONDUCTED BY THE ATTORNEYS, THAT WOULD BE OUR
10:13:36 22 REQUEST.

10:13:36 23 THE COURT: GREAT. ALL RIGHT. THANK YOU VERY MUCH.

10:13:38 24 AND YOU CAN BE SEATED. THANK YOU, COUNSEL.

10:13:43 25 WHETHER TO ALLOW QUESTIONING BY COUNSEL IS WITHIN THE

1 COURT'S DISCRETION. AND AGAIN, IT IS THIS COURT'S PRACTICE TO
2 ALLOW SOME QUESTIONING BY COUNSEL. IN A CASE LIKE THIS, ONE
3 WHERE MANY, IF NOT ALL THE POTENTIAL JURORS ARE LIKELY TO HAVE
4 SOME OPINION ABOUT THE POLICE, POSITIVE OR NEGATIVE, IT IS
5 IMPORTANT THAT THE COURT EXERCISE EVEN MORE CONTROL, NOT LESS,
6 NOT LESS, OVER THE VOIR DIRE, TO ENSURE THAT THOSE PREJUDICES
7 ARE OR ARE NOT SUCH THAT CONDUCT QUALIFICATIONS AS NECESSARY,
8 AND OF EQUAL IMPORTANCE NOT OF THE CHARACTER THAT MIGHT TAINT
9 THE REST OF THE JURY BY HEARING JURORS SAY NEGATIVE OR POSITIVE
10 THINGS ABOUT THE POLICE IN A PUBLIC FORUM WHICH MAY INFLUENCE
11 OTHER JURORS INAPPROPRIATELY.

12 SO THAT'S WHY THE COURT WILL ATTEND, AS IT DOES IN CASES
13 OF SOME NOTORIETY AND SOME EMOTIONAL -- LIKELY EMOTIONAL
14 RESPONSE BY POTENTIAL JURORS TO EXERCISE GREATER CONTROL, AND
15 IF I THINK THAT THE QUESTIONS BY EITHER SIDE ARE GOING BEYOND
16 WHAT THE COURT ALLOWS, I WILL BE SURE TO TELL YOU AND POLITELY
17 ASK YOU TO MOVE ON TO SOMETHING ELSE.

18 AND ALSO, BY THE WAY, THE COURT AGREES WITH THE
19 GOVERNMENT'S ANALYSIS IN DOCKET NUMBER 291 THAT MR. AMIRI HAS
20 NOT SHOWN ANY PREJUDICE IN THE JURY POOL THAT CANNOT BE ROOTED
21 OUT THROUGH STANDARD VOIR DIRE.

22 THE COURT POSTED ITS STANDARD JURY QUESTIONNAIRE AND VOIR
23 DIRE AND THE DEADLINE TO OBJECT WAS ON FEBRUARY 17TH. THE
24 COURT WILL ADD ALL OF THE CASE-SPECIFIC QUESTIONS PROPOSED BY
25 THE PARTIES TO THE JURY QUESTIONNAIRE, EXCEPT FOR NUMBER 7.

10:15:23 1 NUMBER 7 MAY ENCOURAGE INDEPENDENT RESEARCH AHEAD OF JURY
10:15:29 2 SELECTION, WHICH HAS HAPPENED UNFORTUNATELY, IN THE COURT'S
10:15:31 3 EXPERIENCE. IN FACT, I HAD A JUROR IN A CIVIL CASE WHO SAID HE
10:15:34 4 WOULD BE THE BEST POSSIBLE JUROR BECAUSE HE REVIEWED THE ENTIRE
10:15:37 5 DOCKET BEFORE, SO HE WAS EXTREMELY KNOWLEDGEABLE AND WOULD BE A
10:15:41 6 GREAT JUROR. OF COURSE WE COUNT -- WE DID NOT LAUGH, BUT WE
10:15:45 7 DID THANK HIM AND EXCUSE HIM. AND I WORRY ABOUT THAT.

10:15:51 8 AND JURORS HAVE BEEN FOUND TO, WHEN THEY GET SUMMONED AND
10:15:54 9 THEY DON'T KNOW THE NAME OF THE CASE, THEY WILL DO RESEARCH ON
10:15:56 10 THE DOCKET AND FIGURE OUT WHAT KIND OF CASE IT IS AND THEN READ
10:15:59 11 THE DOCKET OR DO RESEARCH, WHICH WE DISQUALIFY THEM AND IT
10:16:04 12 WOULD BE VERY UPSETTING TO THE COURT.

10:16:06 13 AFTER REVIEWING THE SURVEY RESPONSES FROM POTENTIAL
10:16:08 14 JURORS, THE PARTIES WILL NEED TO MEET AND CONFER REGARDING
10:16:13 15 EXCUSES FOR CAUSE AND HARDSHIP AND WILL PROVIDE THAT
10:16:15 16 INFORMATION TO THE COURT PRIOR TO JURY SELECTION. I WILL SET A
10:16:19 17 DATE ONCE WE RECEIVE THE RESPONSES.

10:16:22 18 NOW I HAVE TO SAY THAT IN RECENT TRIALS THAT THIS COURT
10:16:28 19 HAS HAD, COUNSEL HAS DONE A GOOD JOB IN FOCUSING ON THOSE
10:16:33 20 EXCUSES THAT SUMMARILY SHOULD BE GRANTED, RECOGNIZING THAT THE
10:16:40 21 COURT, AND AS YOU WILL HEAR WHEN WE ARE ACTUALLY IN THE
10:16:42 22 SELECTION PROCESS, THE COURT DOES NOT -- I'M VERY STRICT WHEN
10:16:49 23 IT COMES TO EXCUSES FOR CAUSE, BECAUSE IN MY VIEW IT'S THE
10:16:56 24 OBLIGATION OF EVERY PERSON, IF QUALIFIED, TO SERVE ON A JURY
10:17:02 25 AND WE ALL HAVE REASONS FOR NOT BEING IN THE JURY BOX.

10:17:07 1 SO I WILL ASK COUNSEL WHEN THEY -- TO KEEP IN MIND WHEN
10:17:13 2 THEY MEET IN CONFER THAT THE COURT IS PRETTY STRICT WITH
10:17:17 3 RESPECT TO EXCUSES FOR CAUSE.

10:17:20 4 SO ONE OF THE THINGS THAT I THINK -- THIS IS SOMETHING
10:17:26 5 THAT HAS COME UP IN THE COURT'S MIND BASED UPON THE NATURE OF
10:17:28 6 THIS CASE.

10:17:29 7 SO WE INTEND TO SUMMON 90 PANELISTS, AND ALTHOUGH I DON'T
10:17:39 8 THINK WE CAN GET 90 PANELISTS IN THIS COURTROOM, WE CAN
10:17:43 9 PROBABLY GET 70 OR 75. WHAT I INTEND TO DO IS START WITH THE
10:17:51 10 75 OR AS MANY AS WE CAN SQUEEZE IN IN THE COURT, FOR THE
10:17:58 11 INITIAL VOIR DIRE. IF WE ARE UNABLE, BASED UPON THE COURT'S
10:18:04 12 RULING WITH RESPECT TO EXCUSALS, TO SEAT A JURY, WE WILL BRING
10:18:10 13 IN THE OTHER TRANCHE OF PEOPLE, WHATEVER IS LEFT, WHICH WOULD
10:18:14 14 BE A SMALL NUMBER, ACTUALLY, WE WOULD BE ABLE TO GO THROUGH IT
10:18:16 15 PRETTY QUICKLY, BUT I THINK WITH 75 OR SO, WE WILL BE ABLE TO
10:18:21 16 GET A JURY GIVEN THE NUMBER OF PEREMPTORIES AND THE STANDARD
10:18:26 17 EVEN EXPANDED NUMBER OF EXPECTED EXCUSALS FOR CAUSE.

10:18:32 18 SO THAT'S MY PLAN. IF I COULD GET MORE IN THE COURTROOM,
10:18:35 19 I WOULD PUT AS MANY IN. BECAUSE THIS COURT USES WHAT'S CALLED
10:18:40 20 THE MODIFIED ARIZONA METHOD OF JURY SELECTION WHICH MEANS THAT
10:18:45 21 THE INQUIRY, THE VOIR DIRE IS TO THE ENTIRETY OF THE ARRAY.

10:18:50 22 WHY DO WE DO THAT? WE DO THAT BECAUSE IF WE DO 12 PACKS
10:18:55 23 OR 6 PACKS OR WHATEVER THEY DO IN STATE COURT, SOME OTHER
10:18:59 24 COURTS, THEN THE PARTIES REALLY, WHEN THEY EXERCISE THEIR
10:19:03 25 PEREMPTORIES, HAVE NO IDEA WHAT'S LOOMING IN THE BACK BENCHES

1 IF YOU WILL, OR BEHIND THESE JURORS, BUT THIS WAY YOU WILL HAVE
2 A SENSE OF ALL THE PANELISTS, THEIR RESPONSES, SO THAT WHEN YOU
3 EXERCISE YOUR PEREMPTORIES YOU WILL HAVE A GOOD SENSE OF WHO
4 ARE THE OTHER PEOPLE THAT MIGHT GET STUCK IN THE BOX AFTER
5 THESE JURORS ARE EXCUSED. AND SO WE USE THE MODIFIED ARIZONA
6 METHOD, WE ADDRESS ALL QUESTIONS TO THE ENTIRE ARRAY.

7 NOW, SO I REQUIRE THE PARTIES TO EXERCISE THEIR PEREMPTORY
8 CHALLENGES SIMULTANEOUSLY AND BLIND AS TO THE OTHER PARTY'S
9 SELECTION UNTIL THE JURY IS FINAL.

10 IN OTHER WORDS, UNLIKE SOME COURTS, IN THIS COURT WE DO
11 NOT PASS THE LIST OF JURORS BACK AND FORTH, YOU EXERCISE YOUR
12 PEREMPTORIES SIMULTANEOUSLY WITH EACH OTHER. OBVIOUSLY THE
13 DEFENDANTS CAN SHARE INFORMATION BUT I DON'T REQUIRE EITHER
14 SIDE TO DISCLOSE TO THE OTHER SIDE WHO THEY HAVE STRICKEN.

15 SO EACH DEFENDANT WILL HAVE TEN PEREMPTORY CHALLENGES, AND
16 THE DEFENDANTS, AS I SAID, DO NOT NEED TO EXERCISE THEIR
17 PEREMPTORY CHALLENGES BLIND TO EACH OTHER. SO THE DEFENDANTS
18 CAN SHARE INFORMATION ABOUT WHAT PEREMPTORIES THEY ARE
19 EXERCISING SO THEY DON'T UNDULY OVERLAP AND USE MORE THAN THEY
20 NEED TO USE. AND I'M GOING TO SEAT 12 JURORS WITH FOUR
21 ALTERNATES.

22 NOW WITH RESPECT TO ALTERNATES, THE WAY I DO IT, I DON'T
23 TELL THE JURORS, YOU WILL KNOW BUT THEY WILL NOT KNOW, WHO IS
24 AN ALTERNATE. WE BASICALLY MIX THEM UP, PUT THEM IN THE JURY
25 BOX AND WE TELL THEM WE ARE NOT LETTING THEM KNOW WHO THE

PEREMPTORIES ARE UNTIL AFTER CLOSING ARGUMENTS. THAT WAY
NOBODY THINKS THAT THEY ARE, IF YOU WILL, ON THE BENCH OR IN
RESERVE, AND THEY ALL PAY ATTENTION AND THEY KIND OF AT THE
VERY END, THEY TRY TO THINK ABOUT WHO MIGHT BE THE ALTERNATES,
BUT THERE IS NO WAY TO KNOW, BUT YOU ALL WILL KNOW AND THE
COURT WILL KNOW WHO THE ALTERNATES ARE.

SO ALL CHALLENGES WILL BE EXERCISED OUTSIDE THE PRESENCE
OF THE JURY. EACH SIDE HAS TWO ADDITIONAL PEREMPTORY
CHALLENGES WITH RESPECT TO -- WHICH MAY BE USED ONLY TO REMOVE
ALTERNATE JURORS. AND THAT'S UNDER FEDERAL RULE OF CRIMINAL
PROCEDURE 24(C) (4) (A) WHICH REQUIRES A SEPARATE SELECTION FOR
ALTERNATES VIS A VI THE PRIMARY JURY.

THESE CHALLENGES WILL BE EXERCISED AFTER THE PARTIES HAVE
EXERCISED THEIR PEREMPTORY CHALLENGES AS TO THE REGULAR JURORS.

COUNSEL, AS I SAID, WILL KNOW WHO THE ALTERNATES ARE BUT
THE JURORS WILL NOT AND WE WILL EXCUSE THE ALTERNATES AFTER
CLOSING ARGUMENTS. THEY WILL BE EXCUSED FROM DELIBERATIONS BUT
WILL REMAIN ON CALL AND SUBJECT TO THE COURT'S PROPER CONDUCT
INSTRUCTION UNTIL THE JURORS REACH A VERDICT AND THEN THEY WILL
BE RELIEVED.

SO IF SOMETHING HAPPENS DURING DELIBERATION AND WE NEED TO
SUBSTITUTE AN ALTERNATE, THEY WILL BE PRISTINE WITH RESPECT TO
THEIR POTENTIAL SERVICE AS REGULAR JURORS.

AND SO THE ORDER OF CHALLENGES AND/OR EXCUSALS ARE AS
FOLLOWS:

FIRST, HARDSHIP OR TIME, TO THE EXTENT JURORS HAVE NOT RESPONDED IN THEIR QUESTIONNAIRES AND COUNSEL HAS NOT AGREED, THAT WILL BE THE FIRST GROUP THAT WE WILL CONSIDER.

WITH RESPECT TO THE SECOND ONE, THE SECOND APPROACH WILL BE WILL BE FOR CAUSE, CHALLENGES FOR CAUSE. THE THIRD WILL BE PEREMPTORY CHALLENGES, AND THE FOURTH WOULD BE BATSON CHALLENGES, ONCE WE HAVE A PUTATIVE COMPLETE JURY AND WE KNOW WHO THE PANELISTS ARE, OR THE POTENTIAL JURORS ARE, IF THERE IS A BATSON ISSUE, YOU CAN RAISE THAT AT THAT PARTICULAR TIME AND I WILL DEAL WITH IT.

NOW PROPOSED PRELIMINARY AND GENERAL JURY INSTRUCTIONS HAVE BEEN POSTED, THE LAST DAY FOR OBJECTIONS IS FEBRUARY 17TH. THE COURT HAS ALSO POSTED ITS INTENDED JURY SLIDE SHOW, AND OBJECTIONS ARE DUE -- THE LAST DAY FOR OBJECTIONS ON THE 17TH AND IT'S ALSO THE 17TH FOR OBJECTIONS TO THE JUROR SLIDE SHOW THAT THE COURT SHOWS WHICH HAS THE BENEFIT OF EDUCATING THE JURORS ON THE IMPORTANCE OF WHAT THEY ARE ABOUT TO UNDERTAKE AND ALSO AS YOU WILL SEE, A SLIDE ABOUT ALL THE BOOKS THAT I'VE READ ABOUT HOW TO GET OUT OF JURY DUTY FOR DUMMIES, AND THERE ACTUALLY IS A BOOK ON THAT.

SO I HAVE READ THEM ALL, AND I ALSO HAVE A LITTLE SLIDE ON WHO HAS ACTUALLY BEEN CALLED, INCLUDING CHIEF JUSTICE OF THE SUPREME COURT, CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT, AND NOT TO PUT TOO FINE A POINT ON IT, TAYLOR SWIFT, WHO DID SERVE ON A JURY WHEN ASKED.

10:24:36 1 SO JURY PANELISTS MAY NOT HAVE HEARD OF THE CHIEF JUSTICE,
10:24:41 2 I'M SURE THEY HAVE HEARD OF TAYLOR SWIFT. SO I WILL LOOK
10:24:45 3 FORWARD TO GETTING ANY OBJECTION THAT YOU MIGHT HAVE TO EITHER
10:24:47 4 THE SUBSTANCE OF THOSE SLIDES OR THE ORDER OF THOSE SLIDES. I
10:24:51 5 TRY TO MAKE THEM AS NEUTRAL AS POSSIBLE FOR BOTH SIDES, BUT IF
10:24:55 6 ANY SIDE HAS ANY OBJECTION, PLEASE LET ME KNOW, PARTICULARLY IF
10:25:00 7 THERE ARE ANY CHANGES TO THE WITNESS LIST IN ACCORDANCE TO WHAT
10:25:03 8 I HAVE SAID TODAY BECAUSE I WILL BE READING THE NAMES OF THE
10:25:06 9 PROSPECTIVE WITNESSES AND ASKING THE JURORS IF THEY KNOW ANY OF
10:25:11 10 THE POTENTIAL WITNESSES, SO PLEASE PAY PARTICULAR ATTENTION TO
10:25:15 11 THAT.

10:25:18 12 BEFORE I MOVE ON, ARE THERE ANY QUESTIONS WITH RESPECT TO
10:25:21 13 THE WAY THE COURT CONDUCTS VOIR DIRE?

10:25:25 14 OKAY. YES. COME ON UP, PLEASE, COUNSEL.

10:25:32 15 AND DO ME FAVOR, WOULD YOU MIND REIDENTIFYING YOURSELF FOR
10:25:35 16 THE COURT REPORTER.

10:25:36 17 MS. LOPES: NICOLE LOPES.

10:25:38 18 THE COURT: THANK YOU.

10:25:38 19 MS. LOPES: MY QUESTION WAS IS THERE A THIRD SET OF
10:25:40 20 JURY INSTRUCTIONS THAT WILL BE COMING OUT ABOUT THE SUBSTANTIVE
10:25:43 21 CRIMES?

10:25:45 22 THE COURT: BESIDE, AFTER -- OTHER THAN THE
10:25:48 23 PRELIMINARY THAT I'VE -- NO, JUST THOSE. DID YOU HAVE
10:25:53 24 SOMETHING PARTICULARLY IN MIND? BECAUSE TYPICALLY WE DON'T, WE
10:25:56 25 JUST TALK ABOUT WHAT THE PARTIES AGREE IS THE STATEMENT OF THE

1 CASE, THE NEUTRAL STATEMENT OF THE CASE.

2 IS THERE SOMETHING ELSE YOU HAD IN MIND? BECAUSE I
3 HAVEN'T SEEN ANYTHING YOU SUBMITTED.

4 MS. LOPES: NOT AS TO VOIR DIRE, YOUR HONOR, I WAS
5 JUST ASKING IF WE HAD A THIRD SET OF JURY INSTRUCTIONS, BECAUSE
6 I JUST NOTICED THERE WAS NOTHING IN THE JURY INSTRUCTIONS THAT
7 INSTRUCTS ON THE ACTUAL CRIMES. I DID SUBMIT SEPARATE JURY
8 INSTRUCTIONS AS TO THAT BECAUSE I DISAGREED WITH THE GOVERNMENT
9 EXCLUDING THE ELEMENTS OF THE CRIME. SO THAT'S -- SINCE THAT'S
10 WHAT THE JURY IS GOING TO BE DELIBERATING OVER.

11 THE COURT: ALL RIGHT. I WILL TAKE ANOTHER LOOK AT
12 THAT IN LIGHT OF WHAT YOU ARE SAYING AND SEE IF I MISSED
13 SOMETHING, WHICH IS QUITE POSSIBLE. THANK YOU FOR BRINGING
14 THAT TO MY ATTENTION.

15 MS. LOPES: THANK YOU, YOUR HONOR.

16 THE COURT: SO JUST IN TERMS OF -- YEAH, COME ON
17 FORWARD, COUNSEL, YOU LOOK LIKE YOU HAVE SOMETHING. AND JUST
18 REIDENTIFY YOURSELF.

19 MS. CRANDELL: YES. JANELLE CRANDELL.

20 DID THE COURT PROVIDE ANY KIND OF DECISION WITH THE
21 REQUEST FOR THE PEREMPTORY CHALLENGES THAT WE ALSO REQUESTED IN
22 OUR MOTION?

23 THE COURT: I DIDN'T, BUT EXCEPT IMPLICITLY BY GIVING
24 YOU THE NUMBER THAT I'M ALLOWING. YES, I DID TAKE THAT INTO
25 ACCOUNT. THANK YOU VERY MUCH.

10:27:03 1 MS. CRANDELL: THANK YOU.

10:27:04 2 THE COURT: ALL RIGHT.

10:27:05 3 I JUST WANTED TO SAY THAT IN TERMS OF TIMING, SO TYPICALLY
10:27:14 4 IF WE HAVE TIME AT THE CONCLUSION OF JURY SELECTION, WHETHER
10:27:20 5 IT'S IN ONE DAY OR WE HAVE TO MOVE IT TO THE NEXT, TO TWO DAYS,
10:27:24 6 I HAVE TO SAY IN TWENTY SOME ODD YEARS ON THE BENCH, I'VE NEVER
10:27:29 7 HAD TO GO TO THE SECOND DAY, WE WOULD GO A LITTLE LATER, WE
10:27:33 8 WOULD GET IT DONE SO WE GET THOSE JURORS WHO ARE ULTIMATELY
10:27:38 9 GOING TO BE EXCUSED TO COME BACK, BECAUSE I ALWAYS WORRY THEY
10:27:38 10 WON'T COME BACK, SO I TRY TO FINISH IT.

10:27:40 11 BUT IF WE HAVE ENOUGH TIME, WHENEVER THAT DAY IS, I WOULD
10:27:43 12 TYPICALLY DO THE PRE-INSTRUCTION RIGHT THEN AND THERE WHILE
10:27:48 13 THEY ARE -- JUST TO KIND OF GET THEM ENURED TO THE RULES AND
10:27:51 14 BEHAVIOR AND ALL OF THAT, SO I GIVE THE PRELIMINARY
10:27:54 15 INSTRUCTIONS THEN, AND -- BUT I DO NOT SWEAR THE JURY PRIOR TO
10:28:00 16 THE TESTIMONY BEGINNING. I DON'T THINK IT'S -- IT'S
10:28:06 17 APPROPRIATE PRACTICE, BUT IT'S NOT FAIR TO THE GOVERNMENT TO
10:28:09 18 SWEAR THE JURY PREMATURELY BECAUSE JEOPARDY MAY ATTACH, SO I
10:28:13 19 DON'T DO THAT, BUT THEY WILL BE INSTRUCTED AS TO THEIR PROPER
10:28:16 20 CONDUCT.

10:28:17 21 SO I WANT TO TALK ABOUT EXHIBITS EVIDENCE AND ADDITIONAL
10:28:20 22 WITNESS ISSUES.

10:28:21 23 FIRST OF ALL, STIPULATIONS. THE STIPULATIONS FOR
10:28:26 24 AUTHENTICITY WERE VERY HELPFUL, THANKS COUNSEL. I WILL JUST
10:28:29 25 SAY FOR EVERYBODY'S BENEFIT, INCLUDING MOSTLY THE JURY AND THE

1 PROCESS, THE MORE STIPULATIONS YOU COULD MAKE, ESPECIALLY WITH
2 REGARD TO AUTHENTICITY, ADMISSIBILITY, FOUNDATION, ET CETERA,
3 THEN THE MORE OF THE JURORS' TIME WE WILL SAVE AND THE MORE
4 THEY WILL PAY ATTENTION TO YOUR PRESENTATIONS OF THE SUBSTANCE
5 OF THE CASE, AND JURORS DON'T REALLY LIKE TECHNICAL OBJECTIONS.

6 LET ME ASK STARTING WITH GOVERNMENT COUNSEL, HAVE YOU
7 DISCUSSED -- WELL, TO YOUR KNOWLEDGE, IS THE GOVERNMENT GOING
8 TO USE A SEPARATE COMPUTER PRESENTATION SYSTEM FROM DEFENSE
9 COUNSEL?

10 MR. KRISHNAMURTHY: YES, I BELIEVE WE WILL.

11 THE COURT: ALL RIGHT.

12 SO COUNSEL SHOULD BE SURE TO SCHEDULE A TRAINING SESSION
13 WITH THE COURTROOM DEPUTY AHEAD OF TRIAL TO MAKE SURE THAT THE
14 TECHNOLOGY GOES SMOOTHLY, BECAUSE THAT'S ANOTHER THING THAT
15 REALLY BUGS A JURY, AND NOT TO MENTION THE COURT, IF THERE ARE
16 GLITCHES IN PRESENTATION THAT COULD HAVE BEEN AVOIDED, I THINK
17 CASES WHERE YOU PRESENT EXHIBITS AND INFORMATION VISUALLY TO A
18 JURY WITHOUT GLITCHES, THE JURORS REALLY APPRECIATE THAT.

19 AND THEY EXPECT IT. YOU WILL SEE THEY WILL GET
20 CONDITIONED TO LOOK DOWN AT THEIR -- OH, THE JURY GETS
21 CONDITIONED TO HAVING EXHIBITS COME UP ON THEIR SCREENS.

22 JUST TO GO BACK TO THE POINT REGARDING THE JURY
23 INSTRUCTIONS, I WAS JUST THINKING THAT, SO ANY FINAL JURY
24 INSTRUCTIONS THAT DEAL WITH THE APPROPRIATE ELEMENTS OF THE --
25 ALL THE ELEMENTS AND THE SUBSTANTIVE INSTRUCTIONS, THOSE ARE

DISCUSSED DURING THE CHARGING CONFERENCE WHEN WE ARE GETTING CLOSE TO THE END OF THE PRESENTATION.

AND THOSE WILL ALL BE IRONED OUT AND COUNSEL WILL KNOW WELL IN ADVANCE OF WHAT THOSE ARE, BUT WE DON'T GENERALLY PRESENT THOSE IN THE PRELIMINARY INSTRUCTIONS, THEY WILL BE IN THE FINAL INSTRUCTIONS, SO YOU WILL HAVE EVERY OPPORTUNITY TO ARGUE AND URGE ON THE COURT, THE INSTRUCTIONS THAT EACH SIDE REQUESTS.

SO WITH RESPECT TO -- SO MAKE SURE YOU HAVE THE TRAINING. AND WITH RESPECT TO THE EXHIBITS, THE PARTIES SHOULD PROVIDE THE COURT WITH TWO USB DRIVES WITH EXHIBITS AT THE START OF TRIAL, TO THE EXTENT YOU HAVE THEM, AND YOU SHOULD HAVE THEM. AND AT THE END OF EACH TRIAL DAY, THE PARTIES SHALL MEET WITH THE COURTROOM DEPUTY TO CONFIRM WHICH EXHIBITS HAVE BEEN ADMITTED INTO EVIDENCE.

IN OTHER WORDS, THE COURTROOM DEPUTIES ARE EXCELLENT AT KEEPING TRACK, BUT IT'S REALLY UP TO COUNSEL TO MAKE SURE THAT ONLY -- THAT A, THE EXHIBITS YOU THOUGHT YOU WERE OFFERING AND THAT YOU THOUGHT THE COURT RULED ON WERE ACTUALLY IN EVIDENCE, AND AT THE CLOSE OF THE TRIAL, PARTIES SHALL PREPARE A DIRECTORY OF ALL THE EXHIBITS THAT WILL GO TO THE JURY ON A NORTHERN DISTRICT OF CALIFORNIA COMPUTER, WE CALL IT CAND PC, WHICH IS A DUMB COMPUTER WHICH THE JURY WILL HAVE TO VIEW EXHIBITS, BUT NOT ANYTHING ELSE.

AND SO THE DIRECTORY REALLY IS JUST A LIST OF EXHIBITS,

1 THE NAME OF THE EXHIBIT AND THE NUMBER OF THE EXHIBIT. SO IF
2 THE JURY WANTS TO FIND A VIDEO OR WHATEVER, THEY HAVE THE
3 DIRECTORY BOTH ON PAPER AND ON THE CAND PC SO THEY CAN GO RIGHT
4 TO THAT AND CLICK IT AND OPEN THAT PARTICULAR EXHIBIT. SO WE
5 WILL TALK MORE ABOUT THAT WHEN WE GET INTO THE CHARGING
6 CONFERENCE, ET CETERA.

7 I URGE THE PARTIES TO PRESENT AS MUCH EVIDENCE AS POSSIBLE
8 ELECTRONICALLY, AND THEN WITH RESPECT TO THE CAND PC, THERE IS
9 A PORTION OF THE COURT'S WEBSITE WHICH GIVES INSTRUCTIONS ON
10 ELECTRONIC JURY PRESENTATION OF EVIDENCE AND THE USE OF THE
11 CAND PC. SO TO THE EXTENT YOU ARE NOT FAMILIAR WITH THAT, THAT
12 WILL GIVE YOU EVERYTHING YOU NEED. SHOULD YOU NEED DISCUSSION
13 WITH THE COURT'S I.T. DEPARTMENT, WE WILL BE HAPPY TO MAKE THAT
14 AVAILABLE FOR YOU.

15 NOW WITH RESPECT TO OBJECTIONS, THE COURT HAS REVIEWED A
16 NUMBER OF OBJECTIONS THAT HAVE BEEN RECEIVED BY THE COURT. THE
17 COURT HAS REVIEWED THEM -- WILL REVIEW THEM, BUT I WILL NOT
18 PRE-RULE ON THEM BECAUSE I FIND THAT THERE'S ONLY SO MUCH WE
19 CAN DO IN THESE CONFERENCES AND I REALLY NEED TO HEAR THE
20 EVIDENCE IN -- THE EVIDENCE THAT WE HEAR AT THE TRIAL IN THE
21 CONTEXT.

22 ALL RIGHT. SO ANOTHER MISCELLANEOUS ISSUE, I DON'T WANT
23 WHAT I WOULD CALL "DEAD AIR." WHAT I MEAN BY DEAD AIR IS
24 EXACTLY WHAT IT SOUNDS LIKE. IN OTHER WORDS, I DON'T WANT --
25 IF WE ARE GOING TO SIT UNTIL 4:30, I DON'T WANT COUNSEL TO SAY,

1 WELL IT'S 3:30, WE DON'T HAVE ANY MORE WITNESSES. THAT WILL BE
2 VERY UPSETTING TO THE COURT. I WOULD RATHER INCONVENIENCE
3 WITNESSES RATHER THAN INCONVENIENCE THE COURT. SO PLEASE MAKE
4 SURE THAT YOU HAVE SUFFICIENT -- IT DOESN'T HAVE TO BE A
5 WITNESS, SUFFICIENT MATERIAL TO FILL EVERY MINUTE OF THE COURT
6 DAYS, BECAUSE IT'S A ZERO SUM GAME, IT COMES OUT AT THE END.

7 AS I SAID, I DON'T IMPOSE TIME DEADLINES ON CRIMINAL
8 CASES, I DO IT IN CIVIL, PLEASE RESPECT THAT SINCE THE
9 GOVERNMENT HAS THE BURDEN, THEY HAVE MORE WITNESSES, INITIALLY
10 IT APPLIES TO THE GOVERNMENT BUT ALSO TO THE DEFENSE.

11 LET ME ASK GOVERNMENT COUNSEL, WILL THE GOVERNMENT BE
12 REQUESTING DAILY TRANSCRIPTS?

13 MR. KRISHNAMURTHY: YES, WE WILL.

14 THE COURT: ALL RIGHT. DO THE DEFENDANTS INTEND TO
15 REQUEST DAILY TRANSCRIPTS?

16 MS. CRANDELL: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 MS. LOPES: US AS WELL, YES.

19 THE COURT: OKAY. SO ALL PARTIES DO.

20 PLEASE COOPERATE WITH THE COURT REPORTER WITH RESPECT TO
21 ORDERING THOSE AND MAKE SURE YOU COMPLY WITH ALL THEIR
22 REQUIREMENTS, ET CETERA.

23 NOW I WANT TO TALK ABOUT ONE SORT OF, I WILL CALL IT
24 ELEPHANT IN THE ROOM. THE COURT NOTES, AND I NOTED THIS IN AN
25 ORDER WHICH COUNSEL RESPONDED TO, ON THE ISSUE OF MR. WENGER'S

1 APPEAL, I WANT TO JUST SAY THE FOLLOWING TO MR. WENGER, AND IF
2 HIS COUNSEL IS INVOLVED IN ADVISING HIM AS COUNSEL, THE COURT
3 STILL BELIEVES IT HAS JURISDICTION OVER THIS ACTION DESPITE
4 MR. WENGER'S APPARENT PRO SE APPEAL OF ITS LATEST ORDER DENYING
5 MR. WENGER'S MOTION TO SUPPRESS. A DISTRICT COURT LOSES ITS
6 POWER TO PROCEED ONLY IF THE DEFENDANT'S INTERLOCUTORY CLAIM OR
7 APPEAL IS CONSIDERED IMMEDIATELY APPEALABLE. AND I'M CITING
8 FOR THAT UNITED STATES V. HICKEY, H-I-C-K-E-Y, 580 F.3D 922 AT
9 928, NINTH CIRCUIT 22,009 "FILING AN APPEAL FROM AN
10 UNAPPEALABLE DECISION DOES NOT DIVEST THE DISTRICT COURT OF
11 JURISDICTION." THE SUPREME COURT HAS MADE CLEAR THAT "PRETRIAL
12 ORDERS GRANTING OR DENYING A MOTION TO SUPPRESS EVIDENCE IN A
13 FEDERAL CRIMINAL TRIAL ARE NOT APPEALABLE UNTIL AFTER TRIAL."

14 AND I'M CITING FOR THAT DIBELLA V. UNITED STATES, 369 U.S.
15 121 AT 127, DECIDED IN 1962.

16 ACCORDINGLY, THE COURT WILL PROCEED, UNLESS AND UNTIL
17 ORDERED BY A HIGHER COURT, INCLUDING THE NINTH CIRCUIT OR THE
18 SUPREME COURT, NOT TO PROCEED, THE COURT WILL PROCEED WITH THIS
19 TRIAL NOTWITHSTANDING MR. WENGER'S PRO SE APPEAL.

20 AND I JUST WANT TO SAY ONE OTHER THING AS AN ASIDE. I
21 MENTIONED THIS AT THE VERY BEGINNING WHICH IS FOR THOSE OF YOU
22 WHO HAVE NOT TRIED CASES IN THIS COURT, I DO NOT ALLOW SPEAKING
23 OBJECTIONS, MEANING IF YOU HAVE AN OBJECTION, USUALLY
24 "OBJECTION" IS FINE ENOUGH, OR IF YOU WANT TO ADD A CITATION TO
25 A LOCAL RULE OR A CASE, YOU CAN CITE THAT, BUT PLEASE DON'T

1 GIVE A SPEECH ABOUT WHY THIS IS OBVIOUSLY INCOMPETENT EVIDENCE
2 OR WHATEVER, JUST GIVE ME A RULE, I WILL RULE ON IT. I THINK I
3 HAVE A PRETTY GOOD IDEA OF WHAT THE FEDERAL RULES OF EVIDENCE
4 OF THE CASE REQUIRES WITH RESPECT TO ADMISSION OF EVIDENCE.

5 JUST SIMPLY SAY "OBJECTION, HEARSAY" OR "OBJECTION,
6 403(B)," OR WHATEVER, "404(B)" WHATEVER IT IS. IF I WANT TO
7 HEAR MORE ARGUMENT THEN I WILL EITHER BRIEFLY HEAR IT IN FRONT
8 OF THE JURY OR MORE LIKELY HAVE A SIDEBAR, WHICH REMINDS ME
9 THAT SIDEBARS ARE VERY RARE IN MY COURT, I FIND NO NEED TO HAVE
10 THEM, MOST OF THE TIME, BECAUSE MOST OF THOSE ISSUES THAT ARE
11 RAISED, I KNOW WHAT THEY ARE AND I CAN RULE ON COUNSEL'S
12 CONCERN, IF ANY, AND MANY OF THEM CAN BE DEALT WITH OUTSIDE OF
13 THE HEARING OF THE JURY BEFORE COURT STARTS IN THE MORNING.

14 SO AS YOU CAN SEE, WHAT THE COURT IS TRYING TO DO HERE IS
15 SQUEEZE ALL OF THE UNNECESSARY AIR OUT OF THIS CASE SO IT'S ALL
16 A JURY CASE AND YOU CAN ALL PRESENT YOUR CASES AND GO FORWARD
17 FROM THERE.

18 SO THAT CONCLUDES THE COURT'S REMARKS. DOES GOVERNMENT
19 COUNSEL HAVE ANYTHING ADDITIONAL THAT THEY WOULD LIKE TO RAISE
20 AT THIS TIME?

21 MR. KRISHNAMURTHY: YES, YOUR HONOR.

22 I WAS ACTUALLY HOPING TO BRIEFLY SEEK CLARIFICATION ON THE
23 COURT'S ORDER WITH RESPECT TO MR. AMIRI'S SECOND MOTION IN
24 LIMINE, THE MOTION TO EXCLUDE RACIALLY DEROGATORY LANGUAGE.

25 IN READING THE COURT'S ORDER, THE COURT REFERENCED THE

1 GOVERNMENT'S AGREEMENT WITH MR. AMIRI'S POSITION, BUT THE
2 GOVERNMENT ONLY AGREED WITH MR. AMIRI'S POSITION IN PART IN
3 WHICH IT AGREED THAT RACIALLY DEROGATORY LANGUAGE THAT WAS NOT
4 CONNECTED TO AN INTENT TO USE FORCE WAS EXCLUDABLE, BUT IT DID
5 NOT AGREE THAT SUCH LANGUAGE THAT WAS CONNECTED TO INTENT TO
6 USE FORCE OR EXPRESSIONS REGARDING FORCE WERE EXCLUDABLE.

7 WAS THE COURT ADOPTING THE GOVERNMENT'S POSITION OR
8 MR. AMIRI'S POSITION?

9 THE COURT: WELL I THINK THAT I NEED TO RECONSIDER
10 THAT BECAUSE I SAID GENERALLY, AS A GENERAL MATTER, THE USE OF
11 THOSE TYPES OF -- THAT TYPE OF LANGUAGE -- IS SO INFLAMMATORY
12 IN THIS DAY AND AGE THAT THE COURT USUALLY WOULD EXERCISE IT'S
13 403 DISCRETION.

14 I UNDERSTAND THE GOVERNMENT'S POSITION THAT SOMEHOW THAT
15 INFORMS THE INTENT OF MR. AMIRI IN DOING THE THINGS YOU CLAIM
16 HE DID. I TAKE IT THAT'S YOUR PRINCIPAL POINT, IS IT NOT?

17 MR. KRISHNAMURTHY: CORRECT. AND MORE SPECIFICALLY,
18 THERE ARE CERTAIN COMMUNICATIONS WHERE THERE ARE BOTH
19 REFERENCES TO RACIALLY INFLAMMATORY LANGUAGE AND EXPRESSIONS OF
20 INTENT TO USE FORCE.

21 THE COURT: ALL RIGHT. WELL I WILL REEVALUATE THAT
22 SPECIFICALLY AND I WILL ALSO REREAD THE DEFENSE RESPONSES, SO
23 IT'S ALL DONE IN CONTEXT, AND I WILL ISSUE A FURTHER RULING ON
24 THAT.

25 MR. KRISHNAMURTHY: THANK YOU.

10:40:11 1 THE COURT: THE SHORT ANSWER TO YOUR QUESTION IS IT
10:40:18 2 MAY VERY WELL BE -- WHY CAN'T WE JUST REDACT THAT LANGUAGE FROM
10:40:23 3 THE COMMUNICATIONS, THE RACIALLY CHARGED EPITHETS, IF YOU WILL?

10:40:28 4 MR. KRISHNAMURTHY: YOUR HONOR, PART OF OUR THEORY IS
10:40:30 5 THAT THE EXTREME LANGUAGE SORT OF CONVEYED THE EXTREME NATURE
10:40:34 6 OF THE DEFENDANT'S INTENT, THE INTENT TO VIOLATE CONSTITUTIONAL
10:40:37 7 RIGHTS.

10:40:38 8 THERE ARE A NUMBER OF COURTS THAT HAVE HELD THAT ABUSIVE
10:40:41 9 LANGUAGE IS PROBATIVE OF THAT INTENT. AND SO WE THINK WHEN
10:40:44 10 THEY ARE DIRECTLY CONNECTING THE CONVERSATION, THEY SHOULD BE
10:40:47 11 ADMITTED, ALTHOUGH WE AGREE WHEN THEY ARE NOT CONNECTED, WE
10:40:50 12 WOULD NOT SEEK TO ADMIT IT.

10:40:51 13 THE COURT: SO MAYBE THE LATTER IS WHAT I WAS
10:40:54 14 FOCUSING ON RATHER THAN THE FORMER, SO I'M GOING TO REREAD THE
10:40:59 15 GOVERNMENT'S PAPERS AS WELL AS THE DEFENSE PAPERS SO I CAN GET
10:41:01 16 BOTH SIDES AND THEN I WILL ISSUE A FINAL RULING ON THAT. THANK
10:41:01 17 YOU FOR BRINGING IT TO THE COURT'S ATTENTION.

10:41:06 18 ANYTHING FURTHER FROM DEFENSE COUNSEL AT THIS POINT? COME
10:41:12 19 ON UP.

10:41:14 20 MS. LOPES: I JUST WANTED TO PUT TO THE COURT'S
10:41:15 21 ATTENTION THAT THE SLIDE SHOW DID NOT HAVE DEFENDANT WENGER'S
10:41:19 22 WITNESSES IN IT.

10:41:19 23 THE COURT: OH, REALLY? OKAY.

10:41:21 24 MS. LOPES: YES.

10:41:21 25 THE COURT: DO WE HAVE THOSE IN SOME DOCKET THAT I

10:41:23 1 CAN --

10:41:24 2 MS. LOPES: YES.

10:41:25 3 THE COURT: WHICH ONE CAN WE LOOK AT?

10:41:27 4 MS. LOPES: THE JOINT STATEMENT OF THE CASE.

10:41:28 5 THE COURT: ALL RIGHT. I WILL DEFINITELY ADD THOSE
10:41:30 6 TO THE SLIDES. THANK YOU VERY MUCH, THAT WAS AN OVERSIGHT ON
10:41:33 7 THE COURT'S PART.

10:41:34 8 MS. LOPES: ALSO MARK LILLIENFELD IS AN INVESTIGATOR,
10:41:36 9 NOT AN ATTORNEY. HE WAS LISTED IN THE SLIDE SHOW AS AN
10:41:39 10 ATTORNEY, SO I JUST WANTED TO MAKE SURE THE COURT WAS AWARE OF
10:41:42 11 THAT.

10:41:42 12 AND THEN LASTLY, WE HAD RAISED AN OBJECTION TO THE SLIDE
10:41:45 13 SHOW AND THE STATEMENT OF CASE. THERE IS A ONE-OFF LINE IN
10:41:49 14 THERE THAT BASICALLY INTIMATES THAT DEVON WENGER HAD FALSIFIED
10:41:53 15 OR FILED MISLEADING POLICE REPORTS, BUT THERE IS NO CHARGES
10:41:58 16 AGAINST HIM FOR THAT. AND THEN BASED ON THE COURT'S RULING IN
10:42:01 17 THE 404'S THIS MORNING, THE ONLY ONE THAT TOUCHED ON THAT HAS
10:42:05 18 NOW BEEN EXCLUDED, SO I JUST WANTED TO BRING THAT TO THE
10:42:09 19 COURT'S ATTENTION AS WELL.

10:42:09 20 THE COURT: ALL RIGHT. BEFORE WE GET TO YOUR NEXT
10:42:12 21 POINT, LET ME ASK THE GOVERNMENT COUNSEL ON THAT, TYPICALLY I
10:42:15 22 LIKE TO HAVE A KIND OF, MAYBE IN AN UNUSUAL CASE LIKE THIS, A
10:42:21 23 KUMBAYA MOMENT WHERE EVERYBODY AGREES, BECAUSE I WANT THE
10:42:24 24 STATEMENT TO BE AS NEUTRAL AS POSSIBLE.

10:42:25 25 CERTAINLY BOTH SIDES ARE FREE TO BRING UP POINTS NOT IN --

10:42:28 1 AND I'M SURE THEY WILL BECAUSE THEY ARE ADVOCATES -- WHAT'S
10:42:32 2 YOUR POSITION ABOUT EXCLUDING THAT LANGUAGE THAT COUNSEL FINDS
10:42:36 3 PROBLEMATIC IN THE STATEMENT OF THE CASE, BECAUSE IT DOES DEAL
10:42:39 4 WITH BOTH THE SLIDE SHOW AND THE VOIR DIRE.

10:42:42 5 MR. KRISHNAMURTHY: I APOLOGIZE. I WASN'T FAMILIAR
10:42:44 6 WITH THAT SPECIFIC OBJECTION, IN FACT I THOUGHT WE DID HAVE
10:42:47 7 AGREEMENT ON THE DESCRIPTION OF THE CASE. THAT MAY BE OUR
10:42:50 8 MISTAKE.

10:42:51 9 THE COURT: WELL NO, NO, NO, LET ME INTERRUPT YOU.

10:42:54 10 COUNSEL IS SAYING THAT BECAUSE OF THE COURT'S IN LIMINE
10:42:56 11 RULINGS, SOME OF THE LANGUAGE MAY NOT BE APPROPRIATE. SO WHY
10:42:59 12 DON'T THE TWO OF YOU, OR I DON'T KNOW HOW MANY THERE, MEET AND
10:43:02 13 CONFER AND TRY TO COME UP WITH SOMETHING AND SUBMIT IT BY THE
10:43:06 14 DAY'S END SO WE CAN GET THAT IN THE CAND.

10:43:09 15 MR. KRISHNAMURTHY: YES, YOUR HONOR.

10:43:09 16 MS. LOPES: THANK YOU, YOUR HONOR.

10:43:10 17 THE COURT: ALL RIGHT. SO I WILL DEFINITELY LOOK AT
10:43:11 18 THAT. BECAUSE AGAIN, MY GOAL IS TO MAKE THIS -- IT'S NEVER
10:43:15 19 GOING TO BE PLAIN VANILLA BECAUSE THE GOVERNMENT IS MAKING
10:43:18 20 ALLEGATIONS AGAINST DEFENDANTS, BUT I TRY TO MAKE IT AS NEUTRAL
10:43:21 21 AS POSSIBLE, SINCE I'M READING IT, I DON'T WANT THERE TO BE ANY
10:43:24 22 UNDUE EMPHASIS BEING GIVEN TO EITHER SIDE'S CASE, BUT I WILL DO
10:43:29 23 THAT, THAT'S A GOOD POINT. THANK YOU.

10:43:31 24 ANYTHING FROM MR. GOYETTE OR --

10:43:34 25 MR. GOYETTE: NO, YOUR HONOR.

10:43:35 1 THE COURT: ALL RIGHT.

10:43:36 2 WE WILL SEE YOU AT TRIAL, AND IF THERE ARE ANY CHANGES,
10:43:38 3 LET ME KNOW. BUT PLEASE -- AND BY THE WAY, THE SLIDE SHOW,
10:43:45 4 REALLY THE DISCLOSURE IN THE SLIDE SHOW, THE INTENTION OF IT IS
10:43:49 5 FOR EVERYBODY TO CAPTURE THE NAMES OF EVERYBODY SITTING AT
10:43:53 6 COUNSEL TABLE, INCLUDING COUNSEL, AND INVESTIGATORS,
10:43:57 7 PARALEGALS, ET CETERA. SO I INTEND IT TO BE -- BECAUSE I'VE
10:44:00 8 HAD SITUATIONS WHERE SOMEBODY MIGHT SAY, HEY I KNOW HIM, OR I
10:44:05 9 KNOW HER, AND THAT'S A PROBLEM, SO PLEASE KEEP THAT IN MIND.

10:44:08 10 ALL RIGHT. SO I WOULD EXPECT BY THE END OF THE DAY IF
10:44:10 11 THERE'S -- I WILL LOOK AT MR. WENGER'S WITNESSES AND WE WILL
10:44:14 12 DEFINITELY ADD THAT, AND I WILL LOOK FORWARD TO GETTING BY THE
10:44:16 13 END OF TODAY, THE UPDATED, IF THERE WILL BE SUCH, STATEMENT OF
10:44:23 14 THE CASE.

10:44:24 15 AND I WILL LET YOU KNOW AT SOME POINT AS SOON AS WE KNOW
10:44:28 16 OR HOW MANY PHYSICAL PEOPLE -- PANELISTS WE CAN GET INTO THIS
10:44:35 17 ROOM SO AS TO AVOID HAVING TO -- BECAUSE I READ -- IN ADDITION
10:44:44 18 TO THE SLIDE SHOW, I READ A LITTLE STATEMENT WHICH I CALL THE
10:44:49 19 COURT'S 4TH OF JULY SPEECH WHICH TALKS ABOUT GENERALLY THE
10:44:52 20 HISTORY OF OUR JURY SYSTEM AND THE IMPORTANCE OF JURY DUTY AND
10:44:56 21 JURY SERVICE WHICH IS CALCULATED TO IMPRESS ON THE JURY THE
10:45:03 22 SERIOUSNESS OF THE PROCEEDINGS AND THE IMPORTANCE OF THEIR BOTH
10:45:08 23 SERVICE AND COMPLIANCE WITH THE COURT'S RULES.

10:45:10 24 SO ANYWAY, I WILL SEE YOU AT TRIAL. THANK YOU VERY MUCH,
10:45:13 25 EVERYBODY.

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THE CLERK: COURT IS ADJOURNED.

(THE PROCEEDINGS WERE CONCLUDED AT 10:45 A.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE
INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATE: 2/17/25